SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 112

MORTON SOBELL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

PETITIONS FOR WRITS OF CERTIORARI AND EXHIBIT THERETO

VOL. II

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HARRY GOLD resumed the stand:

Direct Examination continued.

By Mr. Lane:

Q. Now Mr. Gold, at the conclusion of this morning's session I believe you were giving an account of a conversation with Yakovlev in which you were reciting the details of the modus operandi. Now did you complete your conversation with reference to that particular item?

A. No, I had not.

Q. Will you continue, please?

A. In addition to the details of my operations, of my conduct with the source of information in America, I had a very set pattern which I used in connection with my dealings with Yakovlev. This is how it worked: We had an [fol. 1181] arrangement not only for regular meetings but we had an arrangement for alternate meetings, should one of the regular ones not take place, and then in addition to that we had an arrangement for an emergency meeting. This emergency meeting was a one-way affair. A system was set up whereby Yakovlev could get in touch with me if he wanted me quickly, but I couldn't get in touch with him because I didn't know where. Yakovlev told me that in this way the chain was cut in two places. The person from whom I got the information in America did not know me by my true name, nor did he know where I lived, nor could he get in touch with me and I couldn't get in touch with Yakovlev. Yakovlev said this was a good thing.

In addition, Yakovlev and I had a very exact method when we were going to transfer information. It might be that something would have to be copied and then returned. In that case we had to have a set procedure. On certain occasions we had a definite means by which we transferred information. Such means would include a set-up whereby I would take the information and put it between the folds of a newspaper and Yakovlev and I would exchange the newspapers. The one that I got was just a newspaper. The one that he got had the information between the folds, the information usually being in some sort of an enclosure. In [fol. 1182] addition to this, of course, we had regular con-

ferences all along at which we discussed my conduct with the people in America who were furnishing me with information, and the final point was that we had a system set up whereby we could act or react very promptly in case there was any sign of surveillance, and this system provided for not only surveillance should I notice any before I came to see Yakovlev, but surveillance if we should suspect any while we were actually having a meeting, and also if there should be any suspicious actions around either of us after we had parted, *around either of us after we had parted.*

Q. Now, does that exhaust your recollection of that conversation?

A. That is about all that I can recall about that conversation, Mr. Lane.

[fol. 1183] Q. Now, did you have a meeting with Dr. Fuchs in Cambridge, Massachusetts, early in January of 1945?

Mr. E. H. Bloch: If the Court please, do I assume that this question presupposes that this is part of the conspiracy charged in this indictment?

Mr. Lane: Yes, your Honor.

A. Yes, I did.

Q. Did you have a conversation with Dr. Fuchs at that time?

A. Yes, I did.

Q. As a result of that conversation, what did you do?

A. In consequence of the conversation that I had with Dr. Fuchs, I did two things. On the same day that I saw Dr. Fuchs, the same morning that I saw Dr. Fuchs in Cambridge, Massachusetts, I returned from Cambridge to New York City and turned over to Yakovlev a package of papers which Fuchs had given me. About a week later, I wrote a report which I turned over to Yakovlev.

Q. When did you turn this report over to Yakovlev?

A. The report was turned over to Yakovlev somewhere around the second week in January.

Q. Whereabouts did you turn this report over to Yakovlev?

A. It was turned over to Yakovlev somewhere in downtown.

Mr. E. H. Bloch: Pardon me. Is that January [fol. 1184] 1945?

Mr. Lane: That is correct.

The Witness: January of '45.

Q. At that time did you have a conversation with Yakovlev?

A. Yes, I did.

Q. What was the conversation?

A. I told Yakovlev that I had received the following information from Fuchs: First, that Fuchs was now stationed at a place called Los Alamos, New Mexico; that this was a large experimental station. It had formerly been a boy's school, a select boys' school. Fuchs told me that a tremendous amount of progress had been made. In addition, he had made mention of a lens, which was being worked on as a part of the atom bomb. Finally, we had set a date, this date to be the first Saturday in June of 1945, and at this date I was to meet Fuchs in Santa Fe, New Mexico.

Q. Did you have a further meeting with Fuchs within the next month or so?

A. Not within the next month or so.

Q. Did you have a meeting with Yakovlev in May of 1945?

A. I had a meeting with Yakovlev in February, early in February of 1945.

Q. Where did this meeting take place?

A. This meeting took place about 23rd Street and Ninth or Tenth Avenue.

[fol. 1184a] Q. Did you have this conversation with him at that time?

A. Yes, I did.

Q. What was the conversation?

A. At this meeting Yakovlev told me to try to remember anything else that Fuchs had mentioned during our Cambridge meeting, about the lens. Yakovlev was very agitated and asked me to scour my memory clean so as to elicit any possible scrap of information about this lens. I recall the meeting very well, because I was frightened, it was a bad neighborhood to be in.

Mr. E. H. Bloch: I move to strike that out.

The Witness: I am sorry.

The Court: All right, strike it out.

Mr. Saypol: What is the objection? Is it the fact that he was frightened, if the Court please?

The Court: I am striking out being frightened.

Mr. Saypol: Otherwise I take it the witness may continue?

The Court: That is right.

Q. Does that exhaust your recollection of the conversation at that particular meeting?

A. Yes, it does.

By the Court:

Q. Well, did you give him anything else?

A. What is it?

[fol. 1185] Q. You say he asked you to search your memory, give him every scrap of information you had. Now, did you give him anything else at that meeting?

A. I didn't give him anything else, that I can recall, at that meeting.

The Court: Very well.

A. (Continuing:) I think I put everything down in the report which I gave about the second week in January.

The Court: All right.

By Mr. Lane:

Q. Now in May of 1945, did you have a meeting with Yakovlev?

A. Yes, I did.

Q. Will you try to fix the date as best you can of that particular meeting? The exact date of the meeting that I had with Yakovlev in May of 1945 was on the last Saturday in May, and about—pretty late in the afternoon, around four in the afternoon, I would say.

Q. Where did this meeting take place?

A. The meeting with Yakovlev on the last Saturday in May took place inside of a combination restaurant and bar, called Volks—V-o-l-k—V-o-l-k-s, I think it is, k's or possibly V-o-l-e-k-s. In any case, it is at the southwest corner of 42nd Street and Third Avenue, in Manhattan.

Q. Now, will you tell the jury what happened on this [fol. 1186] occasion?

A. I stood at the bar with Yakovlev and we had a drink. I told Yakovlev that I wanted to take a walk with him, to dispose of the two matters which were the purpose of our meeting. These matters were, one, first, that Yakovlev would be able to ascertain definitely that I was going to see Fuchs on the first Saturday in June of 1945. I was having difficulty at this time getting off from work and he wanted to make sure that I was going. The second point of our meeting was that we had to arrange for two meetings when I returned from Santa Fe, one meeting at which I would transfer information which I was supposed to receive from Fuchs; then there would be a second meeting some time later, at which I would give Yakovlev a detailed report, as well as a verbal account of exactly what would have transpired at this meeting with Fuchs.

Now, Yakovlev told me that he — some matter to discuss with me at length and he said that we should sit in the rear of Volks' cafe, where there was a circular place with some tables in it, fairly secluded. We did so. We sat down there and the waiter brought us a drink. Yakovlev told me that he wanted me to take on an additional mission besides the one to see Dr. Fuchs. He said that he wanted me to go to Albuquerque, New Mexico. I protested——

Mr. E. H. Bloch: I move to strike that out, your [fol. 1187] Honor.

The Court: All right, strike out "protested".

The Witness: Sorry, your Honor.

The Court: Tell us what you told him.

A. (Continuing:) I told Yakovlev that I did not wish to take on this additional task. Yakovlev told me that the matter was very vital and that I had to do it. He said that a woman was supposed to go in place of me but that she was unable to make the trip. He said therefore, he said that I had to go. I told Yakovlev that it was highly inadvisable to endanger the very important trip to see Dr. Fuchs with this additional task. Yakovlev told me that I didn't understand that this was an extremely important business, that I just had to go to Albuquerque, in addition to going to Santa

Fe, and he said, "That is an order"; and that was all. I agreed to go.

Yakovlev then gave me a sheet of paper; it was onionskin paper, and on it was typed the following: First, the name "Greenglass", just "Greenglass". Then a number "High Street"; all that I can recall about the number is that the last figure—it was a low number and the last figure, the second figure was "0" and the last figure was either 5, 7 or 9; and then underneath that was "Albuquerque, New Mexico". [fol. 1188] The last thing that was on the paper was "Recognition signal. I come from Julius". In addition to this, Yakovlev gave me a piece of cardboard, which appeared to have been cut from a packaged food of some sort. It was cut in an odd shape and Yakovlev told me that the man Greenglass, whom I would meet in Albuquerque, would have the matching piece of cardboard. Yakovlev told me that just in case the man Greenglass should not be present when I called in Albuquerque, that his wife would have the information and that she would turn it over to me. Yakovlev gave me an envelope which he said contained $500., and he told me to give it to Greenglass. Yakovlev told me that I should follow a very devious route on my way to Santa Fe and to Albuquerque. He said that I should first go to Phoenix, Arizona; then to El Paso, and from there to Santa Fe. Yakovlev said that I should do this to minimize any danger of being followed.

The last thing that took place on this last Saturday in May was that Yakovlev and I arranged for two meetings upon my return from the Southwest.

[fol. 1189] Q. Were you to go to Santa Fe before Albuquerque?

A. Yakovlev told me that I was to go to Santa Fe first.

Q. Was there any route to be followed from Santa Fe to Albuquerque?

A. He didn't specify, your Honor. There is only one way that I know of to get from there. They are 60 miles apart and there is a bus runs between them.

The Court: All right.

By Mr. Lane:

Q. Do you have the paper on which those instructions were written?

A. I don't have the paper. When Yakovlev gave me the paper——

Mr. E. H. Bloch: I move to strike out everything else, your Honor.

The Court: All right, strike it out.

Q. What happened to that paper, if you know?

A. I was to destroy the paper.

Q. Did you destroy it?

A. I don't know what happened to it. I just remember the emphasis on memorizing what is in it and destroy it.

Q. Now, will you describe that cardboard you received from Yakovlev on that occasion?

A. Yes. It was about, just about an inch in height, possibly two inches—yes, possibly two inches in length and was shaped this way (indicating). It was rectangular and [fol. 1190] it was shaped like this (indicating). I can draw it.

Q. Well, I show you Government's Exhibits 4-A and 4-B in evidence and ask you if one of those represents the cardboard you received from Yakovlev.

A. This piece here where I have my finger.

Mr. Lane: May the record indicate that the witness is pointing at Government's Exhibit 4-B in evidence.

Q. Now, did you go to Santa Fe in June of 1945?

A. Yes, I did.

Q. When did you arrive in Santa Fe?

A. I arrived in Santa Fe on Saturday the 2nd of June 1945.

Q. And did you meet Dr. Fuchs?

A. Yes, I did.

The Court: What was that date again that you gave?

The Witness: The 2nd of June 1945, a Saturday.

Q. Did you have a conversation with Dr. Fuchs?

A. Yes, I did.

Q. And how long did that conversation last?

A. My conversation with Dr. Fuchs in Santa Fe lasted about 20 minutes to a half hour.

Q. And as a result of that conversation what did you do?

A. As the result of that conversation I did two things: Upon my return to New York I turned over to Yakovlev a bunch of papers which Dr. Fuchs had given me in Santa [fol. 1191] Fe. About two weeks after that——

Q. No. I neglected to ask you how long this conversation took place in Volk's Cafe with Yakovlev? How long did it last?

A. The conversation with Yakovlev in Volk's Cafe took about an hour; three-quarters of an hour to an hour. It is hard to place it just exactly.

Q. Now, when did you depart from Santa Fe?

A. I left Santa Fe in the very late afternoon.

Q. Where did you go?

A. The 2nd of June.

Q. Where did you go?

A. I went by bus from Santa Fe to Albuquerque.

Q. What did you do after you arrived in Albuquerque?

A. I arrived in Albuquerque early in the evening of the 2nd of June, and about 8.30 that night went—about 8.00 or 8.30, yes, I went to the designated address on High Street. There I was met by a tall elderly white-haired and somewhat stooped man. I inquired about the Greenglasses and he told me that they were out for the evening but he thought they would be in early on Sunday morning.

Q. Then what did you do?

A. Then I returned to downtown Albuquerque.

Q. Did you register in any hotel when you were in Albuquerque on this occasion?

[fol. 1192] A. I stayed that night—I finally managed to obtain a room in a hallway of a rooming house and then on Sunday morning I registered at the Hotel Hilton.

Q. Now, did you register under your own name?

A. Yes, I did.

Q. What name did you use?

A. Harry Gold.

Q. Now, what did you do on Sunday? That is June 3, 1945?

A. On Sunday about 8.30 I went again to the High Street address. I was admitted, and I recall going up a very steep flight of steps, and I knocked on a door. It was open- by a young man of about 23 with dark hair. He was smiling. I said, "Mr. Greenglass"? He answered in the affirmative. I said, "I came from Julius", and I showed him the piece of cardboard in my hand, the piece of cardboard that had been given me by Yakovlev in Volks' Cafe. He asked me to enter. I did. Greenglass went to a women's handbag and brought out from it a piece of a cardboard. We matched the two of them.

Q. Will you describe that cardboard which Greenglass showed you?

A. It appeared to be from the same, part of the same packaged food from which the piece of cardboard that I had had originally been cut.

By the Court:

Q. When you say Greenglass matched the two, just what [fol. 1193] did he do?

A. He showed it to me and we put them together, as nearly as I can remember.

Q. How did you put them together? To see whether the ends met, is that what you did?

A. No. Just roughly. I mean you could see at a glance that they were the same thing.

By Mr. Lane:

Q. Now I show you Government's Exhibit 4-A in evidence and I ask you if it resembles the piece of cardboard which Greenglass showed to you?

A. This resembles it, the one that I had my finger on, 4-A, yes.

Mr. Lane: May the record indicate that the witness has identified Government's Exhibit 4-A as the cardboard replica of the piece that was shown to him by David Greenglass.

Q. And the two pieces matched, you say?

A. The two pieces matched.

Q. Now, will you continue the conversation which you had at that time?

(Marked Government's Exhibit 13 for identification.)

A. At this point after we had matched the two pieces of cardboard I introduced myself to Greenglass as Dave from Pittsburgh; that was all. Greenglass introduced me to the young woman who was there and said she was his wife Ruth. Mrs. Greenglass said that it was coincidence that my first [fol. 1194] name and the first name of her husband were the same.

Greenglass then told me that my visit to him on this exact day was a bit of a surprise; he had not expected me right on that day, but that nevertheless he would have the material on the atom bomb ready for me that afternoon.

At this point Mrs. Greenglass went into the kitchen to prepare some food. Then I gave Mr. Greenglass the envelope which Yakovlev had given me in Volks' Cafe. This envelope was the one that contained $500. Greenglass took the envelope from me. Greenglass told me that he would have the information ready at about 4 o'clock, 3.00 or 4 o'clock in the afternoon; the exact time I can't recall except that we set it.

At this point Greenglass told me that there were a number of people at Los Alamos that he thought would make very likely recruits; that is, they were also people who might be willing to furnish information on the atom bomb to the Soviet Union, and he started to give me the names of these people, the names of some of these people. I cut him very short indeed. I told him that such procedure was extremely hazardous, foolhardy, that under no circumstances should he ever try to proposition anyone on his own into trying to get information for the Soviet Union. [fol. 1195] I told him to be very circumspect in his conduct and to never even drop the slightest hint to anyone that he himself was furnishing information on the atom bomb to the Soviet Union.

The last thing that took place that morning was that just as I was preparing to go, Mrs. Greenglass told me that just before she had left New York City to come to Albuquerque she had spoken with Julius. This meeting that we had in

the morning on the 3rd of June 1945, this Sunday morning, took about 15 minutes.

Q. Now I show you Government's Exhibit 13 for identification and I ask you if you can identify the people in that picture.

A. Yes. The man with his arm around the woman is David Greenglass. The woman is Mrs. Ruth Greenglass.

Mr. Lane: I offer Government's Exhibit 13 for identification in evidence.

Mr. E. H. Bloch: No objection.

(Marked Government's Exhibit 13.)

Q. Did you return to the home of the Greenglasses on the same day, Sunday, June 3, 1945?

A. Yes, I did.

Q. And what time did you return?

A. It was about between 3.00 and 3 o'clock.

Q. And who was present when you returned?

A. Mr. Greenglass was there and his wife Ruth was [fol. 1196] there.

Q. And did you have a conversation at that time?

A. Yes, I did.

Q. Will you tell the jury what that conversation was?

A. Mr. Greenglass gave me an envelope which he said contained the information for which I had come, the information on the atom bomb. I took the envelope. Mr. Greenglass told me that he expected to get a furlough sometime around Christmas, and that he would return to New York at that time. He told me that if I wished to get in touch with him then I could do so by calling his brother-in-law Julius, and he gave me the telephone number of Julius in New York City.

Q. Do you recall now what that number was?

A. I cannot.

Q. Was that all that was said at that time?

A. I told Greenglass that very likely I might be returning to Albuquerque in the early fall of 1945 and if I did so there was a possibility that I might stop in and see him.

Q. And did you receive some information at that time, some papers from Greenglass?

The Court: At what time?

A. I have already related——

Mr. Lane: That Sunday afternoon.

[fol. 1196a] A. I have already related that he gave me an envelope which contained, which he said contained information on the atom bomb.

[fol. 1197] Q. But did you examine it at that time?

A. I did not examine it at that time, no. I just took the envelope and put it in my pocket.

Q. How long a period of time did this meeting consume?

The Court: How large an envelope was that?

The Witness: I would say it was a large letter size, pretty large letter size, as I recall it.

Q. How much time was consumed in this particular meeting?

A. The meeting took only about five minutes, possibly ten at the very most.

Q. And then what did you do?

A. The three of us, Mr. Greenglass, Mrs. Greenglass and myself, left the Greenglass's apartment and we walked along a slanting back street in Albuquerque, and there in front of a small building I left the Greenglasses.

Q. And did you return to New York?

A. Yes, I did.

Q. Immediately?

A. Yes, I did.

Q. En route to New York did you at any time inspect the material which you had received from Greenglass?

A. Yes, I did, on the train from Albuquerque to Chicago and somewhere in Kansas, I believe. I examined the material which Greenglass had given me. I just examined it very quickly. My sole purpose was to get it——

[fol. 1198] Mr. E. H. Bloch: I object to what his purpose was.

The Court: All right.

The Witness: I put it into an envelope, into a manila envelope, one of the kind with a brass clasp, and in another manila envelope I put the papers which Dr. Fuchs had

given me. I labeled the two envelopes. On the one from Fuchs I wrote "Doctor". On the one from Greenglass I wrote "Other," o-t-h-e-r.

Q. Well, now, can you describe a little better what was in the Greenglass package?

A. Yes. The material given me by Greenglass consisted of three or four handwritten pages plus a couple of sketches. The sketches had letters on them which were referred to in the text of the three or four handwritten pages. The sketches appeared to be for a device of some kind.

Q. When did you arrive back in New York?

A. I arrived in New York on the 5th of June.

By the Court:

Q. Did you read the descriptive matter that was contained on these other sheets of paper?

A. No, I did not, your Honor. I just—it happened to hit my eye and I leafed through them, is what I recall.

By Mr. Lane:

Q. Now the question was, when did you arrive back in New York?

A. I arrived in New York on the 5th of June, 1945, in the [fol. 1199] evening.

Q. And did you meet Yakovlev?

A. Yes, I did.

Q. On the same day?

A. On the same evening.

Q. Where did you meet him?

A. I met Yakovlev along Metropolitan Avenue, in Brooklyn, and somewhere, where Metropolitan Avenue runs into Queens. It was a very lonely place, particularly at the time of night when I met Yakovlev.

The Court: What time was it?

The Witness: It was about 10 o'clock at night.

Q. Now did I understand you to say that this meeting was by prearrangement?

A. This meeting had been arranged at Volks' Cafe on the last Saturday in May of 1945.

The Court: Excuse me. You say there was an alternative meeting arranged also, in the event you didn't meet that evening?

The Witness: No, your Honor, there was an alternative meeting but its primary purpose was to hand over a written report on what had transpired during my trip to Santa Fe. If it should have happened that I ha*nd*'t been able to make the meeting with Yakovlev, then the alternative meeting would have had to serve a double purpose.

The Court: Very well.

Q. How long did this meeting last with Yakovlev?

[fol. 1200] A. The meeting with Yakovlev lasted about a minute, that was all.

Q. What did you do at that meeting?

A. We met and Yakovlev wanted to know if I had seen the both of them, said, "The doctor and the man". I said that I had. Yakovlev wanted to know had I got information from the both of them and I said that I had. Then I gave Yakovlev the two manila envelopes, the one labeled "Doctor", which had the information I had received from Fuchs in Santa Fe; the one labeled "Other", which had the information I had received from David Greenglass in Albuquerque, on the 3rd of June 1945.

Q. When was your next meeting with Yakovlev?

A. My next meeting with Yakovlev was about two weeks later, and——

Q. Where did this meeting take place?

A. This meeting took place at the end of the Flushing elevated line, at Main Street, in Flushing.

Q. What time was it?

A. The time was in the middle of the evening.

Q. Did you have a conversation with Yakovlev?

The Court: Excuse me. When did you say that was?

The Witness: In the middle of the evening.

The Court: What date did you say that was?

[fol. 1201] The Witness: It was about two weeks after the 5th of June. We are still in June.

Q. Did you have a conversation with Yakovlev at that time?

A. Yes, I did.

Q. Will you tell the jury what that conversation was?

A. I told Yakovlev—Yakovlev told me that the information which I had given him some two weeks previous had been sent immediately to the Soviet Union. He said that the information which I had received from Greenglass was extremely excellent and very valuable. Then Yakovlev listened while I recounted the details of my two meetings, the one with Fuchs in Santa Fe, the one with Greenglass in Albuquerque. I told Yakovlev that Fuchs had related that tremendous progress had been made on the construction of the atom bomb and Fuchs had said that the first trial of an atomic explosion was due to take place in July, in New Mexico. Fuchs and I—I told Yakovlev that Fuchs and I had agreed upon a meeting between the two of us in Santa Fe for September of 1945.

Q. Approximately how long did this conversation last, with Yakovlev?

A. This conversation lasted about two and a half hours. I gave every detail at that time of my two meetings with these people who furnished me with information in the Southwest.

[fol. 1202] Q. Did you have a meeting with Yakovlev early in July of 1945?

A. Yes, I did.

Q. Where did this meeting take place?

A. The meeting with Yakovlev early in July of 1945 took place inside of a combination seafood and bar, which is at the Broadway stop of the Astoria elevated line.

Q. Did you have a conversation?

A. Yes, I did.

Q. What was this conversation?

A. Yakovlev told me that it was necessary that we have an arrangement whereby some Soviet agent other than himself could get in touch with me. At Yakovlev's instructions, I took from my pocket a piece of paper. This piece of paper was a memorandum sheet, something like an invoice, from the Arthur H. Thomas Company, of Philadelphia, a laboratory supply house, and I tore off the top part of this memorandum sheet, and on the reverse side, at Yakovlev's instructions, I wrote the following words, and I wrote it across as a diagonal of a parallelogram. I wrote, "Directions to Paul Street" and the "Street" is spelled out,

S-t-r-e-e-t. Then Yakovlev took this piece of paper and he tore it in an irregular fashion, so that the tear came between the P and the a of the Paul. Yakovlev retained the part of the paper which said "Directions to P" and I was given by Yakovlev the piece of paper which had on it, "aul Street." Yakovlev told me that should I ever receive two [fol. 1203] tickets in an envelope, in the mail, with no other enclosure inside that envelope, that I should take this to be a signal, that a definite number of days after the date that was printed on the tickets—the tickets themselves were to be tickets to either a sporting event or a theatrical attraction in New York City; it would have a date on them—now, a certain number of days after that date on the tickets, I was to go to the Astoria—to the Broadway stop of the Astoria elevated line, but before I went there I was to scout the place very carefully for about an hour, to make sure that there were no signs of surveillance. Then when I was inside, I was to take a seat at a table in this combination restaurant and bar. My replacement Soviet contact was to stand at the bar where he could observe me, to again watch for any symptom of anything suspicious. Then he would approach me, the new Soviet contact, and he would say, "Can you direct me to Paul Street"? I was seated at the table. I would answer, "Yes, I am going there myself. Come along." First, however, he would show me the piece of paper, that is the first thing he would do, he would show me the piece of paper, and then I would produce the matching half. Then would come the recognition signal or the [fol. 1204] recognition phrases having to do with the directions to Paul Street.

(Marked Government's Exhibit 14 for identification.)

Q. I show you Government's Exhibit 14 for identification, and I ask you if this is a replica of the sheet of paper which you had on that particular occasion of your conversation with Yakovlev (handing)?

Mr. E. H. Bloch: May I ask Mr. Lane to explain what he means by "replica"?

The Court: Yes.

Mr. Lane: Yell, it is a duplicate, I believe, Mr. Bloch, of

the same sheet of paper that he had on that occasion, took out of his pocket.

Mr. E. H. Bloch: Does this purport to be the original?

Mr. Lane: No, it does not.

Mr. E. H. Bloch: Oh, I see.

A. This sheet of paper is of the type used by the Arthur H. Thomas Company when someone went there to pick up a package. That was how I had got the original sheet and happened to have it in my pocket.

Q. Is that a duplicate of the sheet you had on that particular occasion?

A. This appears to be a duplicate, Mr. Lane. I just want to see one thing—yes, I was looking at the reverse side to [fol. 1205] see if there was any printing on there. There isn't.

Mr. E. H. Bloch: Mr. Lane, I wonder whether you can let me look at it, so that I don't get confused.

Mr. Lane: Yes (handing).

Q. Now, will you write on this Government's Exhibit 14 for identification the wording that was on that paper, as best you can recall it, and then tear it in the way that you recall it was torn on that particular evening? (Handed to witness.)

A. The wording will have to be written on the reverse side, because that is the way that it was done. It was on the reverse side, not the side where the printing is, but on the back.

Q. Well, you do it as best you recall it.

A. (Witness writes on Government's Exhibit 14 for identification.)

Q. Have you got the writing on there, Mr. Gold?

A. I have got the writing there.

Q. Now, will you tear it in the way you recall it was torn at that time?

A. There is one difficulty, which was unavoidable here. The actual piece of paper was larger in this direction (indicating), but in order not to touch the imprint here, "Government's exhibit," I had to crowd the words towards the

top a little bit, so that it is actually just a little smaller [fol. 1206] in this direction (indicating).

Mr. Lane: On the lefthand side. May the record indicate that the witness is pointing to the lefthand side of the exhibit?

Q. Go ahead, rip it, tear it the way it was torn.

A. Well, I will have to tear across this notation.

Q. Go ahead, tear across it.

A. (Witness tears as requested) Just about like this. Now, this would have to go down a little further. Shall I do it?

Q. You do it.

A. (Witness tears further).

Q. Now, is that a reasonable facsimile of the way the paper was torn before?

A. Yes, it is.

Mr. Lane: I would like to have that marked as Government's Exhibits 14-A and B.

(Marked Government's Exhibits 14-A and 14-B.)

Mr. Lane: Now I offer Government's exhibits 14-A and 14-B for identification in evidence.

The Court: No objection.

(Government's Exhibits 14-A and 14-B for identification marked in evidence.)

Mr. Lane: Would this be a good place to recess, your Honor?

The Court: We will take a recess at this time.

(Short recess.)

[fol. 1207] Mr. Lane: If your Honor please, at the beginning of the noon recess I think you had granted permission for me to show the jury Government's Exhibit 12.

The Court: Yes.

Mr. Lane: May I do so now?

The Court: Yes.

Mr. Saypol: That is the photograph of Klaus Fuchs.

The Court: Yes.

(Mr. Lane hands Government's Exhibit 12 to the jury.)

By Mr. Lane:

Q. Mr. Gold, did you have a meeting with Yakovlev in the middle of August 1945?

A. Yes, I did.

Q. Where did this meeting take place?

A. This meeting took place in Brooklyn.

Q. And did you have a conversation at that time?

A. Yes, I did.

Q. Will you tell the jury what the conversation was?

The Court: Let me get this. When was this?

Mr. Lane: August of 1945, your Honor.

The Court: All right, proceed.

A. The conversation concerned the fact that I was to take, soon to take a trip in September to Santa Fe to meet [fol. 1208] Dr. Fuchs. I told Yakovlev that since I was going to see Dr. Fuchs I might as well go to Albuquerque and see the Greenglasses. At this time Yakovlev told me that it would be inadvisable to endanger the trip to see Fuchs by complicating it with a visit to the Greenglasses in Albuquerque.

Q. Now, was that the sum and substance of that conversation?

A. That is the sum and substance of the conversation.

Q. Now, did you have a meeting with Dr. Fuchs in September 1945?

A. Yes, I did.

Q. When and where did this meeting take place?

A. The meeting took place in Santa Fe, New Mexico, on the 19th of September 1945. The exact place was on the outskirts of Santa Fe along a road leading out of Santa Fe near a large church.

Q. As the result of this conversation what did you do?

A. As the result of the meeting—of the conversation I had with Dr. Fuchs I returned to New York City and I did two things: I returned on the 22nd of September and I missed my meeting with Yakovlev. I got back just too late that evening to see Yakovlev. About 10 days later I met Yakovlev and this time—the original meeting on the 22nd was supposed to be a short one. This time I met him in Main Street in Flushing, in Main Street, Flushing and I

[fol. 1209] turned over to him a package of information which I had received from Fuchs.

Q. Now, at this time did you have a conversation with Yakovlev, in your September meeting with Yakovlev? Was it September or October?

A. This was about 10 days later I would say or two weeks —it was still September, as I recall. Yes, I did.

Q. What was the conversation?

A. The conversation covered the following matters which Fuchs told me: Fuchs had said first that there was no longer open and free and easy cooperation between the British and the Americans at Los Alamos and that many departments which had been formally readily accessible to him were now closed. He said as a result his superiors among the Britains had advised him that he would probably very soon have to return to England.

The second thing was that Fuchs told me that the first explosion at Alamogordo, New Mexico, in July had produced a tremendous feeling of awe among the scientists who had been producing it. He said in addition the attitude of the townspeople had changed quite a bit. Before that they had been regarded as a sort of boondoggling outfit and how they were raised to the level of heroes.

Fuchs told me, the third thing, that he had attended——

[fol. 1210] Mr. E. H. Bloch: If the Court please, may we approach the bench because it is in connection with a proposition of law on this Fuchs conversation. I would like to discuss it with the Court and Mr. Saypol.

The Court: Come up.

(The following proceedings took place at the bench, outside the hearing of the Jury.)

Mr. E. H. Bloch: The indictment here charges these various defendants and the two co-conspirators with conspiracy to commit espionage. Now in the indictment there is an allegation, and with others at present unknown to the grand jury. Now the thing that concerns me is this: At the time this indictment was returned Gold had already confessed and was already available to the prosecution. I don't know whether he testified before this particular grand jury or not. Now what I am concerned about is this: If Fuchs'

participation with Gold was already known in connection with this general conspiracy, then I can't quite gather why Fuchs was not made a co-conspirator. If, on the other hand, the intention was to have this conspiracy between Gold and Fuchs separate and apart from the consipracy charged here, then I would feel under duty to object to any conversation.

[fol. 1211] The Court: I think you misunderstand the theory on which they are putting it in. They are not putting it in to establish that a conspiracy existed between Gold and Fuchs, although one did exist, so much as to establish that a conspiracy did exist on Yakovlev's part with Gold.

Mr. E. H. Bloch: Yes, I understand that.

The Court: Isn't that it?

Mr. Lane: Yes.

Mr. E. H. Bloch: The thing that puzzles me, the materialty of competency of any conversation had between this witness——

Mr. Lane: We are not putting in any conversation yet.

The Court: They didn't put in a single conversation yet.

Mr. Saypol: Are you talking about Sobell?

Mr. E. H. Bloch: No, what he just testified to. He said that is what Yakovlev told him,——

Mr. Lane: We haven't put in a single conversation yet between Fuchs and anybody.

Mr. Saypol: No, we are not going beyond Fuchs. This is all conversation between co-conspirators. It is admissible under any one of several bases in addition to that.

[fol. 1212] Mr. E. H. Bloch: All right.

Mr. Saypol: We have religiously avoided that.

(The following proceedings were had in open court.)

Mr. E. H. Bloch: Just to clarify the record, it is understood that what the witness is now testifying about is a conversation which he had with one of the defendants?

The Court: Yakovlev.

Mr. E. H. Bloch: Yakovlev?

The Court: Yes.

The Witness: I reported to Yakovlev that Fuchs had told me about being present at the first atomic explosion at Alamogordo, New Mexico. Fuchs had said that the flash had been visible some 200 miles away. I told Yakovlev that

Fuchs was very worried about one matter: This concerned the fact that the British had gotten to Kiel, Germany, ahead of the Nazis—ahead of the Russians, and Fuchs was very worried, very much concerned over whether the British Intelligence might not discover the Gestapo dossier upon him. I told Yakovlev that Fuchs had said that he, Fuchs that is, had been the leader of the student group, the German student group at the University of Kiel and had fought the Nazis, Nazi storm troopers in the streets of Kiel. Fuchs [fol. 1213] had said that there was a very complete dossier by the Gestapo upon him and he was greatly troubled by the fact that should the British Intelligence come upon it they would become aware of his very strong Communist background and ties.

Mr. E. H. Bloch: If your Honor please, although as we as lawyers may understand it quite clearly, I would ask the Court to instruct the jury, to tell the jury at this point that Dr. Klaus Fuchs is not a defendant or a conspirator in this proceeding.

The Court: Dr. Klaus Fuchs is not a defendant in this case. This testimony is being admitted in connection with the general charge of conspiracy to commit espionage, in which Yakovlev is a defendant.

Mr. Saypol: Will the Court supplement that observation with the statement also that this witness is a co-conspirator?

The Court: Oh, yes. The witness Harry Gold is a co-conspirator.

The Witness: The final item I reported to Yakovlev were the details of an arrangement which Fuchs and I had arrived at, which arrangement concerned the means by which someone would get in touch with Fuchs when he returned to England. The exact details were there: Beginning on the first Saturday of every month after it has been determined [fol. 1214] that Fuchs had returned to England, at a stop in the British subway, underground in London called Paddington Crescent, possibly Teddington Crescent, 8 p.m., Fuchs was to be on the street at the underground stop, the street level. He was to be carrying five books bound with strings and supported by two fingers of one hand; he was to be carrying two books in another hand. His contact, whoever that would be, was to be carrying a copy of a Bennett Cerf book, "Stop me if you have heard this".

Q. Does that conclude your conversation with Yakovlev at that time?

A. That concludes my conversation with Yakovlev.

Q. When was your next meeting with Yakovlev?

A. Yakovlev and I had a regular series of meetings all throughout that fall of 1945.

Q. Do you recall a meeting in November of 1945?

A. Yes, I do.

Q. With Yakovlev?

A. Yes, I do.

Q. Where was this meeting held?

A. This meeting was held in New York City.

Q. And did you have a conversation with Yakovlev?

A. Yes, I did.

Q. Will you tell the jury what that conversation was?

A. I told Yakovlev that Greenglass had said at the time [fol. 1215] that I saw him in June of that year that Greenglass would be possibly coming home on a furlough about Christmas time. I told Yakovlev the time was drawing near to Christmas and that we ought to make some plan to get in touch with this brother-in-law, Julius, so that we could get further information from Greenglass. Yakovlev told me to mind my own business. He cut me very short.

Q. Now, in January 1946 did you have a conversation with Yakovlev?

A. Yes, I did.

Q. Where did this conversation take place?

A. This conversation took place in New York City.

Q. What was the conversation?

A. Yakovlev at this time told me that I should be very careful, much more careful than ever before. He related to me an incident which had taken place toward the end of 1945. He said that a very important person who had upon him information on the atom bomb had come to New York at the end of 1945 and that he, Yakovlev, had tried to get in touch with that person over a period of time, a period of a few days, but that the man had been trailed by Intelligence men continually, so that Yakovlev had to give up the idea of getting in touch with this source of information.

[fol. 1216] Yakovlev told me, he was telling me the story as an example of how to conduct myself. He said if it came

to a choice it was far better to pass up any chance of getting information than to do anything which would endanger the whole scheme.

Yakovlev said that he was very apprehensive.

By the Court:

Q. Did you know what Yakovlev was doing by way of employment aside from these activities?

A. I did not, your Honor. I had assumed——

Mr. E. H. Bloch: Wait, if the Court please. I object to what he might have assumed.

[fol. 1217] Q. Now was there anything else said on that occasion about any future meetings?

A. Yes. Yakovlev and I had arranged the following. We made a slight change in our method of meeting. Should a scheduled meeting not take place, then the next meeting which would take place would be at the same time as had originally—at the same place that had originally been planned, but the time was changed and the day of the week was changed, and should this alternate meeting not take place, then the emergency meeting would take place. But I was to use extreme caution about the emergency meeting. I was to go there well in advance, to scout it thoroughly, and to make certain that there was absolutely no surveillance going on.

Q. Now, did you have a meeting scheduled with Yakovlev for February of 1946?

A. Yes, I did.

Q. And where was this meeting scheduled to take place?

A. This meeting in February was scheduled to take place at the Earl Movie Theatre in the Bronx.

Q. Did you keep this appointment with Yakovlev?

A. Yes, I did.

Q. And what happened on that occasion?

A. Yakovlev didn't show up.

Q. When was the next time that you saw Yakovlev?

A. The next time that I saw Yakovlev was on the night [fol. 1218] of the 26th of December 1946.

Q. And you didn't see him in the interim between February and December of 1946?

A. For a period of about ten months I did not see Yakovlev.

Q. Now, will you tell the jury how you happened to meet Yakovlev in December of 1946?

A. Early in December of 1946 I received two tickets, two tickets to a boxing match in New York City. The tickets had arrived very late for me to keep the appointment. They had been addressed wrongly; they had been sent to 6328 Kindred Street instead of 6823 Kindred Street, so I wasn't able to keep the appointment.

Q. Kindred Street where?

A. In Philadelphia, my home in Philadelphia. At about five o'clock in the late afternoon of the 26th of December the phone rang at the laboratory where I was working in New York City, the laboratory of A. Brothman and Associates. I answered. A voice asked for Harry Gold. I said that I was Harry Gold. The voice said, "Have you been all right"?

Q. Did you recognize the voice?

A. And said, "I am John". I recognized it as that of Yakovlev. I said, I told him that I had been fine. Now, the phrase used by Yakovlev was a code phrase which was employed to indicate whether there had been any suspicious signs about us, about my being watched, and my answer that [fol. 1219] I was fine was my code answer which indicated that there was no sign of any surveillance going on.

Yakovlev told me that he would meet me at the theatre—he didn't specify. He said at the theatre at 8 o'clock that night. And I said—I answered that I would be there.

Q. And what happened?

A. By the theatre I knew that Yakovlev meant the Earl Theatre where our last meeting had been scheduled.

Q. Now, on that evening did you appear at the Earl Theatre?

A. At exactly eight o'clock I was in the upstairs lounge of the Earl Theatre in the Bronx.

Q. What happened there?

A. There I was accosted by a man who showed me a torn piece of paper which Yakovlev and I had prepared on that night in July in Astoria.

Q. Are you referring to Government's Exhibit 14-A and B in evidence (showing)?

A. Yes, I am.

Q. And are you now telling the jury that one part of that exhibit was shown to you?

A. Yes, it was.

Q. And did you have the other part?

A. I had the matching part.

Q. Did you match the two papers at that time?

A. We did not match them. I was just shown this part.

[fol. 1220] Q. And then what happened?

The Court: What did you mean by accosted? I don't quite understand what you mean.

The Witness: The man who met me was not Yakovlev. He was——

The Court: Is that all you care to convey by the word accosted?

The Witness: No. I would like——

The Court: Go ahead.

The Witness: —to convey more. The man was not Yakovlev. He was tall, about 6 feet 2, had blond hair, and a very determined feature. He walked with a catlike stride almost on the balls of his feet, and he told me, after showing me——

Mr. E. H. Bloch: One moment. I object to what he told him. It wasn't one of the defendants.

Mr. Lane: Well, it isn't necessary, your Honor, to get that. It isn't necessary. It isn't too important.

The Court: All right. Don't tell us what he told you.

Q. Now as a result of your meeting with this individual whom you just described, what did you do?

A. As a result of the meeting I had with the man I met in the lounge of the Earl Theatre I went to the southwest [fol. 1220a] corner of 42nd Street and Third Avenue, and there later that evening met Yakovlev.

Q. Now, was there anybody with you and Yakovlev at that time?

A. No, there was not.

Q. Did you have a conversation?

A. Yes, we did.

[fol. 1221] Q. What was the conversation?

A. Yakovlev asked me if I had anything further from Dr. Fuchs in the interim. I told him I did not. Yakovlev

then apoligized for not having seen me in almost ten months, but he said it was unavoidable, that he had to lie low during that period. We took a walk and we sat down at a bar on Second Avenue. There Yakovlev told me that he was very glad that I was now working in New York. He said it would put much less of a strain upon me as regards to meeting my Soviet contact. Yakovlev told me that I should begin to plan now for a mission which he had. He said that he wanted me to go to Paris, France, beginning in March of 1947. Yakovlev told me I was to go first to London, and from London to take a plane to Paris. He gave me a sheet of paper, on which was typed—a sheet of onionskin paper—and on it was typed the following information regarding a meeting I was to have in Paris. I was to meet a physicist——

Mr. E. H. Bloch: If the Court please, this may seem technical but will the witness tell us what happened to that piece of paper? Otherwise I will have to object to it on the grounds it is secondary evidence.

[fol. 1222] The Court: What happened to the piece of paper?

The Witness: I destroyed that piece of paper just a day or so before Memorial Day of 1947, and just about a few minutes before Agents Shannon and O'Brien of the FBI came to question me about my relationship with Abe Brothman.

Mr. E. H. Bloch: I must say, your Honor, this presents a rather novel proposition to me in connection with the secondary evidence rule. It is my understanding that where a witness wilfully destroys a document, he can't introduce secondary contents of it. Of course, I am not sure of my position in the light of the context of the charges, but may I make objection to save the record?

The Court: All right.

Mr. Lane: Well, your Honor, we withdraw the question and we withdraw the answer.

The Court: All right. I must say, Mr. Lane, you have been very helpful to the Court.

Q. Now, was there any discussion at that time about the name Brothman?

A. Yes, there was. Yakovlev began to discuss with me the means by which I should manage to get off from work, in order to make this trip to Paris. I told Yakovlev that [fol. 1223] once the pressure of work at Abe Brothman and Associates had eased up a bit—and then Yakovlev almost went through the roof of the saloon. He said, "You fool:" He said, "You spoiled eleven years of work". He told me that I didn't realize what I had done, and he told me that I should have remembered that some time in the summer of '45 he had told me that Brothman was under suspicion by the United States Government authorities of having engaged in espionage and that I should have remembered it. Yakovlev threw down on the table where we were sitting, the bar, an amount of money which was about two or three times the actual cost of the drinks which we had had, and he dashed out of the place. I walked along with him for a while, and he kept mumbling that I had created terrible damage and that he didn't know whether it could be repaired or not. Yakovlev than told me that he would not see me in the United States again, and he left me.

Q. Now, during the period between the middle of June of 1944 and December 26 of 1946?

A. Yes.

Q. That was your last meeting with Yakovlev?

A. That is right.

Q. During that period of time did you have any conversations with a man by the name of Dean Slack?

A. I had conversations about—about three or four con- [fol. 1224] versations with a man called Alfred Dean Slack.

Q. As a result of those conversations, what did you do?

A. As a result of those conversations I turned over to Yakovlev information relating to the——

Q. Now, just a minute. I haven't asked you what the contents were.

A. I see, I am sorry.

Q. I merely want to know what you did.

A. I turned over information to Yakovlev.

Mr. E. H. Bloch: If the Court please, I would be obliged if the Court would just tell the jury that Alfred Dean Slack is not a defendant in this case, nor is he a co-conspirator.

The Court: That is right, he is neither a defendant nor a co-conspirator.

Q. Now, prior to your association with Yakovlev, were you associated with anyone else?
A. Yes, I was.
Q. Who was that?

Mr. E. H. Bloch: Would you fix the time, please?
Mr. Lane: Well, I think he has testified that he met Yakovlev in March of 1944. I want to know——
Mr. E. H. Bloch: Prior.
Mr. Lane: On that day, just before he met, before he became associated with Yakovlev.
Mr. E. H. Bloch: Well, I object to it upon the ground it is not within the corners of the indictment.
[fol. 1225] Mr. Lane: I withdraw the question.

(Government's Exhibit 15 marked for identification.)

Mr. Lane: I offer Government's Exhibit 15 for identification into evidence, your Honor.
Mr. E. H. Block (after discussion with other defense counsel): There is no objection to the introduction of this document.

(Government's Exhibit 15 for identification marked in evidence.)

The Court: Are you going to read portions of it to the jury?
Mr. Lane: Yes, sir; I would like to.

Q. Now I show you Government's Exhibit 15 in evidence and I ask you to look at the picture attached thereto and tell me if you recognize that individual (showing)?
A. Yes, I do.
Q. Who is it?
A. That is Anatoli Yakovlev.

The Court: Would you be able to shorten this perhaps if we recessed until tomorrow?
Mr. Saypol: No, we can get it right in.
Mr. Lane: That is the last thing I am going to do.

Q. Now, is this man whose picture I showed you on Government's Exhibit 15 in evidence and whom you have iden-
[fol. 1226] tified as Yakovlev, is that the party whom you knew as "John"?

A. Yes, it is.

Mr. Lane: Now, I am going to read to the jury portions of the certified document from the Department of State.

It is entitled "Foreign official status notification", and it has on here the full name, "Anatoli Antonovich Yakovlev".

The second item: "Name of Government and agency or department thereof," and it is the "Consulate General of the USSR, New York," United States of Soviet Russia.

"Present nationality—USSR.

"Place of birth"—I will have to spell that—"B-o-r-i-s-og-l-eb-s-k", that is the "City *of* town"; "States" is V-o-r-n-n-e-z-h, and the "Country" is the USSR.

"Date of birth—May 31, 1911."

[fol. 1227] "Port or place, date and manner of last arrival in United States and name of vessel, if any:—San Pedro, February 4, 1941, S.S. Ecuador."

"American visa issued by American Embassy in Moscow.

"Duties terminated: Left New York December 1946 by ship.

"Business address: 7 East 61st Street, New York, N. Y.

"Home address: 6 East 87th Street, New York, N. Y.

"Capacity in which signer is now serving, giving title of position, if any: Clerk.

"Date of assumption of present duties in the United States: February 8, 1941.

"Detailed statement of signer's present and proposed activities, including the place or places of performance and for whom performed or to be performed: Clerical duties.

"Nature and place or places of occupation or employment during the last five years, 1936-1941: Student, engineering —Economic Inst., Moscow".

Then attached hereto is a smaller notation, which is headed: "Department of State, Washington.

[fol. 1228] "Anatoli Antonovich Yakovlev has notified the Secretary of State of his (or her) status in the United States as an official (or employee) of the Union of Soviet Socialist Republics Government"; and that is dated April 3, 1941.

On the back of that card is the notation:

"The Secretary of State must be notified of any change in the status of the holder of this receipt".

Attached thereto also is another card:

"Department of State", giving the name "Anatoli Antonovich Yakovlev, 6 East 87th Street, New York, N. Y.," and it sets forth that Yakovlev is a citizen *of* subject of the Soviet Union, "Whose status as an official (or employee) of the Soviet Government has been notified to the Secretary of State by the Embassy *all* legation of the country by which he is employed".

At the bottom of this particular document is the picture of Yakovlev attached thereto and it also contains Yakovlev's signature.

(Mr. Lane hands exhibit to the jury.)

Mr. Lane: Could we adjourn for the day, your Honor? I have one or two more items that I would like to take up.

The Court: You had better take the exhibit back then and [fol. 1229] show it to the jury the first thing in the morning.

We will recess until 10:30 tomorrow morning, Ladies and gentlemen, and again I want to admonish you that you should not read the newspapers in connection with this case on trial, or anything related to it; or listen to the radio, watch television, read any magazines which in any way deal with this case or anything related to it, and I assume that you followed my admonition right along in this case.

You are excused until 10:30 tomorrow morning.

(Adjourned to March 16, 1951, at 10:30 a.m.)

[fol. 1230] New York, March 16, 1951; 10:30 a.m.

Trial resumed

(Jury in the jurybox.)

HARRY GOLD resumed the stand.

Mr. Lane: The Government, your Honor, has no further questions.

The Court: Any cross?

Mr. E. H. Bloch: The defendants Rosenberg have no cross-examination of this witness.

Mr. Phillips: No cross.

The Court: The witness is excused.

(Witness excused.)

The Clerk: George Bernhardt.

GEORGE BERNHARDT, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. What is your occupation?

A. I am a physician.

Q. Will you keep your voice up, Doctor, so that all members of the jury, and counsel, can hear you, please?

[fol. 1231] A. Yes.

Q. Are you duly licensed to practice in the State of New York as a medical doctor?

A. I am.

Q. For what length of time have you had your license to practice as such?

A. Since 1936.

Q. What is your home address, Doctor?

A. 40 Monroe Street, New York.

Q. Do you know the defendant Julius Rosenberg?

A. I do.

Q. Under what circumstances have you come to know Julius Rosenberg?

A. I took care of his children for several years and I was his physician for about six or eight months.

Q. Do you see Julius Rosenberg sitting here in the courtroom?

A. I do.

Q. Will you point him out, please?

A. (Witness stands and points) Right there.

Mr. Kilsheimer: May the record indicate that the witness has identified the defendant.

The Court: Yes.

Q. I call your attention to the spring of 1950. Did you have a conversation with Julius Rosenberg at that time?

Mr. E. H. Bloch: Now, if the Court please, I would like in the first place the time fixed and then I think the ques-[fol. 1232] tion is very general.

The Court: As best as you can fix the time.

Mr. E. H. Bloch: I think the question is general.

Q. Can you fix the time when you had a conversation with Julius Rosenberg in the spring of 1950?

A. Yes, I can.

Q. When was it?

A. I think the latter part of May.

Q. Was this conversation face to face in person?

A. No, sir; it was not.

Q. Will you state how you had the conversation?

A. This was a telephone conversation.

Q. Did you recognize the voice on the other end of the line?

A. Yes, I did.

Q. Whose voice was it?

A. Julius Rosenberg's.

Mr. E. H. Bloch: Your Honor, may we approach the bench?

The Court: All right.

(The following proceedings were had at the bench out of the hearing of the jury:)

Mr. E. H. Bloch: Your Honor, evidently there is going to be some conversation here between this witness and the defendant Rosenberg.

The Court: Yes.

[fol. 1233] Mr. E. H. Bloch: I am not saying to the Court this as of my own knowledge but I have been informed that this witness was told either directly or indirectly that this particular telephone conversation was a result—was a wire-tapped conversation. Now if that is so then under the Nardone cases and the cases following it——

The Court: All right, let us find out.

Is there any wiretapping?

Mr. Saypol: A lot of arid nonsense, and I do not like this procedure. I object to it. Let us hear the testimony.

The Court: It is ridiculous.

Mr. Saypol: I do not like these interruptions. Counsel ought to know the way to proceed.

Mr. E. H. Bloch: Now Mr. Saypol——

The Court: All right.

Mr. E. H. Bloch: Wait, your Honor.

The Court: Yes.

Mr. E. H. Bloch: If this particular conversation, this telephone conversation was not wiretapped, of course, he can testify. If, on the other hand, it was, I would like to be able to ask a few questions.

The Court: You just heard the answer, it was not wiretapped. Why go further when the United States Attorney told you that?

[fol. 1234] Mr. Saypol: I haven't the slightest knowledge that it was ever indulged in.

Mr. E. H. Bloch: O.K.

Now, look, Mr. Saypol, I said I didn't know this of my own knowledge.

Mr. Saypol: I know, but those things don't help any.

Mr. E. H. Bloch: Now don't you think it is my duty——

The Court: Yes. All right, let us not get into it any further.

(The following proceedings were resumed in the presence and hearing of the jury:)

The Court: Now the last question was, did you have a conversation with Mr. Rosenberg in the Spring of 1950.

Mr. E. H. Bloch: May I ask your Honor to direct the witness to a mere yes or no answer, because I am going to ask your Honor's permission for one voir dire question in connection with the relationship.

By the Court:

Q. Did you have such a conversation?

A. Yes, I did.

Q. And you recognized the voice?

A. Yes, sir.

Q. On the telephone?
A. On the telephone.
Q. And are you able to fix the time in the spring?
[fol. 1235] A. Yes.
Q. When was that?
A. Some time in the latter part of May.
Q. 1950?
A. Yes.
Mr. Saypol: Will your Honor bear with me for a moment?
The Court: Yes.
Mr. Saypol: I did not mean to interrupt, excuse me.
The Court: Go ahead, I am through.
(Mr. Saypol confers with Mr. Kilsheimer off the record.)

By Mr. Kilsheimer:

Q. In this conversation which you say you had with Mr. Rosenberg, was it in relation to treatment for himself or for someone else?
A. For someone else.
Q. Will you state the conversation which you had with Rosenberg at that time?
A. He said, "Doctor, I would like to ask a favor of you. I would like to know what injections one needs to go to Mexico", and I hesitated a little, and he laughed and said, "Don't get scared, it is not for me; it's for a friend of mine". And I then proceeded to give him that information, and then as an after-thought I——

Mr. E. H. Bloch: I move to strike out "I then proceeded [fol. 1236] to give him that information".
The Court: Tell us what information you gave him.

Q. Tell us what information you gave him.
A. I told him that he would need typhoid injections and a smallpox vaccination, and I then asked him if this friend of his was a veteran, telling him that if he was a veteran all he would need would be booster doses instead of going through the entire series of injections, and he said. "Yes, he is a veteran".
I then asked him if this friend of his was going to stay in Mexico City or whether he was going to go into the interior because if he went into the interior he would need

typhus injections, and he said, "Yes, he will probably go into the interior", and then I told him that if he decided to go, to give me a little notice because I don't usually stock a typhus vaccine and I would have to get it, and he said he would let me know.

Q. Did that complete the conversation which you had with him?

A. That is right.

Mr. Kilsheimer: I have no further questions.

[fol. 1237] Cross-examination.

By Mr. E. H. Bloch:

Q. Doctor, was this the only conversation you had with Rosenberg about Mexico?

A. To the best of my knowledge it is.

Q. Now Doctor, have you brought any records with you to indicate when you treated the defendant Julius Rosenberg as your patient?

A. No, sir.

Q. Can you refresh your recollection now as to whether Julius Rosenberg had influenza in the spring of 1950?

A. I know that he was ill during that time or at least I believe so. I am sure that that was not the diagnosis.

Q. Well, whatever the diagnosis was, he was ill in the spring of 1950, is that right?

A. I believe so.

Q. Will you tell us now what diagnosis you made of this condition at that time?

A. I think he had a strep sore throat.

Q. Was he confined to bed?

A. Yes, sir, he was.

Q. Do you know how long he was confined to bed?

The Court: What is the relevancy of this?

Mr. E. H. Bloch: I am developing something.

The Court: You are developing that he was confined to bed and was sick?

Mr. E. H. Bloch: No. This is leading up to something. Will your Honor bear with me. Let me assure you——

[fol. 1238] The Court: Let us get to the main problem.

Mr. E. H. Bloch: Yes, I know. I am trying to get to the main problem.

The Court: Go ahead.

(Last question read.)

The Witness: I would just venture a guess and say three to five days.

Q. Was he ill only on one occasion in the spring of 1950?

A. No, sir, I believe he was ill more than once.

Q. Can you tell us what his physical condition was in or about the month of May 1950?

The Court: What do you mean by that? That is too general,—physical condition.

Q. Was he healthy or was he in a run-down condition?

The Court: Oh, no, no.

Mr. E. H. Bloch: Well, I am trying to get from this expert physician the state of his physical health.

The Court: I don't see the relevancy.

Mr. E. H. Bloch: I am coming to that, your Honor. I promise you I will tie this up.

The Court: I think your question is too general anyway —was he run down or in good health.

Q. Well, did you treat him for any ailment in May 1950?

[fol. 1239] A. Yes, sir.

Q. And is it not a fact that Julius Rosenberg was a hay-fever victim?

A. That is so.

Q. And is it not a fact, Doctor, that he used to come to your home in Knickerbocker Village to receive from you hay fever injections?

A. That is a fact.

Q. And is it not a fact that in or about that period he came regularly about once a week or once every two weeks to get these hay fever injections?

A. That is right.

Q. And is it not a fact, Doctor, that when he came to your home in Knickerbocker Village you usually gave him those injections in your living or sitting room?

The Court: Oh, now you are going far afield and I won't permit it. Now let us get to the issue here. I am not interested in these injections or where they were given.

Mr. E. H. Bloch: Well, this is to locate a conversation which this witness is testifying about.

The Court: Let us get to the conversation and then if you don't get the answer you want I will permit you to ask him questions to refresh his recollection.

Mr. E. H. Bloch: All right.

Q. Now Doctor, do you remember discussing the question of vacations with Julius Rosenberg in or about May 1950 [fol. 1240] in your living room while he was waiting in that living room for the result of the hay fever injection that you gave him that evening?

A. Offhand I do not.

Q. Let us see——

By the Court:

Q. Did you ever discuss with Julius Rosenberg his taking a vacation in Mexico?

A. No.

By Mr. E. H. Bloch:

Q. All right. Now, Doctor, do you remember one evening when Julius Rosenberg came around to get a hay fever injection when you showed him pictures of you and the members of your family while you were vacationing in Cape Cod?

A. I do not recall showing him those pictures. I have shown those pictures to many people but I have no recollection of showing them to Mr. Rosenberg.

[fol. 1241] Q. You have shown those pictures to your patients?

A. Yes.

Q. Did you ever discuss with Julius Rosenberg in your living room at your home various places in or out of the United States, where people go for vacations, at least well-known vacation resorts?

A. I have no recollection of that.

Q. None whatsoever?

A. Not at this time, no.

Q. Did you have a patient by the name of Schreier?
A. Yes.
Q. Was it Mr. Schreier or Mrs. Schreier?
A. Mr.
Q. And was Mr. Schreier also a hay fever victim?

Mr. Kilsheimer: I object to this, your Honor. This is not proper cross-examination.
Mr. E. H. Bloch: I withdraw that.

Q. Was Mr. Schreier also a patient of yours?
A. Yes.

The Court: What is the relevance of that?
Mr. E. H. Bloch: I am coming to it.
The Court: You are coming to it all morning long and I haven't seen it yet.
Mr. E. H. Bloch: Well now, if the Court please, I am going to ask the witness to answer the question. I hope the Court will bear with me. I haven't many more ques-
[fol. 1242] tions.
The Court: Ask the question about Mr. Schreier. Now, I don't want all this surrounding information.
Mr. E. H. Bloch: I am trying to refresh his recollection.
The Court: All right, ask him whether he said something to Mr. Schreier. Let's get to it.
Mr. E. H. Bloch: All right, may he answer the question as to whether Mr. Schreier was a patient of his?
The Court: Yes.
Mr. E. H. Bloch: In about May 1950?
The Court: All right, I will permit him to answer.

A. Yes, he was.
Q. Do you remember one night in your house discussing with Mr. Schreier and with Mr. Rosenberg Cape Cod and various other vacation resorts? Would that refresh your recollection?
A. I am afraid it does not, specifically. I have discussed Cape Cod with many people.
Q. And you also had shown pictures of Cape Cod?
A. That's right, but I have no recollection of this specific——
Q. Now, when was the first time, Doctor, that the agents

of the United States Government, or the representatives of the FBI, particularly, came around to see you?

[fol. 1243] A. The early part of August, 1950.

Q. Do you remember what time they came in to see you?

A. Two o'clock in the afternoon.

Q. Do you recognize any of the agents of the FBI, who came around to see you, in this court?

A. No, sir.

Q. Do you know the name of the man or men——

Mr. Bloch: I withdraw that.

Q. How many men came around to see you?

A. Two.

Q. Do you remember their names?

A. I recall one name: I don't recall the other.

Q. Would you give it to us, please?

A. A Mr. Stevenson, I believe.

Q. Did Mr. Stevenson represent himself to you — be an FBI representative?

A. The other man did, but I don't recall his name.

Q. At any rate, one of the two men told you they were from the FBI; is that right?

A. That's right.

Q. And did they ask you at that time whether or not you had any conversations with Julius Rosenberg about Mexico?

A. Yes, they did.

Q. And is it not a fact, Doctor, that at that time you told them that you can't remember any such conversation?

A. Well, that is not exactly correct.

Q. Well, tell us what you told them at that time.

[fol. 1244] A. They asked me a very specific question.

Q. What was the specific question?

A. The question they asked was whether a Mr. Rosenberg had ever approached me to sign a certificate of vaccination for his brother-in-law without having vaccinated him.

Q. What did you say to that?

A. I said, "To the best of my recollection, he had not".

Mr. E. H. Bloch: That is all.

By the Court:

Q. Doctor, did they ask you then or did you subsequently volunteer this information concerning this telephone call of Mr. Rosenberg, which you have testified to about here?
A. I recalled this conversation two or three days later and I volunteered the information.
Q. You volunteered the information to the FBI?
A. Yes.

Mr. E. H. Bloch: Just one further question. I just want to get the time.

By Mr. E. H. Bloch:

Q. When, specifically, did the FBI representatives come around to you to try to elicit this information from you?
A. It was at two o'clock on a Monday afternoon.
Q. I mean what month?
A. In August.
Q. Do you remember what part of August?
A. I would think the end of the first week or the be-
[fol. 1245] ginning of the second. I couldn't place it any closer than that.
Q. And you say that this telephone conversation took place in the latter part of May?
A. That's right.

Mr. E. H. Bloch: That is all.
The Court: Anything further?
Mr. Kilsheimer: I have no further questions.
The Court: Thank you, Doctor.

(Witness excused.)

The Court: William Danziger.

William Danziger, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Cohn:

Q. Mr. Danziger, where do you live?
A. I live at 124 Featherbed Lane, in the Bronx.

Q. In the Bronx?
A. Yes.
Q. How old are you?
A. 33.
Q. Are you married?
A. Yes, I am.
Q. Have you any children?
A. Yes.
Q. How many?
A. Two.
Q. Now, are you a graduate of any college?
A. Yes, I am.
Q. What college?
A. The College of the City of New York.
Q. What year were you graduated?
A. In June 1938.
[fol. 1246] Q. Do you know the defendant Morton Sobell?
A. Yes, I do.
Q. Do you see him here in court?
A. Yes, I do.
Q. Where is he seated?
A. Right there (pointing).
Q. Where did you first meet Sobell?
A. We attended high school, Stuyvesant High School, together.
Q. Was he in your class at City College as well?
A. Yes, he was.
Q. Do you know the defendant Julius Rosenberg?
A. Yes, I do.
Q. Do you see him?
A. Yes.
Q. Seated at the defense table?
A. Yes.
Q. Was he in your class at City College, too?
A. Yes, he was.
Q. Had you known him from high school, or anything like that?
A. No, I did not.
Q. You first met him in City College; is that right?
A. That is correct.
Q. With whom did you have more frequent contact in college, Sobell or Rosenberg?

A. Sobell.

Q. After you had graduated from City College, did you ever have occasion to see Sobell again?

A. Yes, we worked together for some years at the Bureau of Ordnance of the Navy Department, in Washington.

Q. How about Rosenberg?

A. No, I haven't much occasion to see him.

[fol. 1247] Q. Did you see Rosenberg between the years 1938 and 1950?

A. No.

Q. Who left the Bureau of Ordnance first, you or Sobell?

A. I think I did.

Q. After you left there, did you see him from time to time?

A. Yes, I did.

Q. Did you have any correspondence with him?

A. Yes, I did.

Q. You continued your friendship; is that correct?

A. Yes, I did.

Q. You would write to him and he would write to you?

A. That is correct.

Q. You did not see Rosenberg during this period?

A. That is correct.

Q. Now, I want to come to the year 1950. Was there a time in 1950 when you left Washington and moved to New York?

A. Yes, there was.

Q. About what month was that?

A. I left Washington in March of 1950 and my family joined me in New York in May of 1950.

Q. After you moved up to New York in the spring of 1950, did you have occasion to renew your social acquaintance with the defendant Sobell?

A. Yes, I did, I visited at his house in May of 1950.

[fol. 1248] Q. Where did he live then?

A. He was living in Flushing, Long Island.

Q. You say you visited his home; is that right?

A. Yes, I did, with my wife.

Q. Where are you employed?

A. I am employed at the Academy Electrical Products Corporation.

Q. What is the address of that corporation?

A. 4849 Broadway.

Q. At the time of your visit to Sobell's home in May of 1950, did you have occasion to mention your employment to him?

A. Yes, I did.

Q. Did you tell him what type business you were in?

A. Yes, I told him I was in the electrical business.

Q. Did you have any conversation with him about your business?

A. Well, I told him I was designing electrical products.

Q. What did he say to you?

A. Well, no, I don't recall any particular comment.

Q. Did he suggest you make any contact——

Mr. Phillips: I object to this suggesting to the witness.

The Court. Overruled.

Mr. Phillips: Exception.

Q. Did he mention anything to you concerning any [fol. 1249] contact you might make in connection with your business?

A. Well, you might consider this to be, that is, he mentioned the fact that Rosenberg was in the machine shop business.

Q. You had not seen Rosenberg since college days; is that right?

A. That's right, I had not, and——

Q. Did he give you Rosenberg's business address?

A. Yes, he did.

Q. Did he make any suggestion?

A. Well, in talking about the work I was doing, when he mentioned the fact that Rosenberg was in the machine shop business, I indicated my place of business occasionally farms out machine shop work and it was at my suggestion that I got his, Rosenberg's address.

Q. He gave it to you; is that right?

A. Yes, he did.

Q. Did you thereafter have occasion to see Rosenberg?

A. Yes, I did.

Q. Did you tell him that you had been referred to him by Sobell?

A. Yes.

Q. When did you see Rosenberg, about when; do you remember that?

A. I think it was in the latter part of June, 1950.

Q. Where?

A. Well, I went down to his place of business and he [fol. 1249a] wasn't there, and the men in the shop told me he was out at a stamping place. I was at that time rather interested in getting an estimate on stamping, so I went out to the stamping place and saw him out there.

Q. Did you have a conversation with him there?

A. Yes.

[fol. 1250] Q. Did you see him on any other occasions?

A. Yes, I saw him sometime in July.

Q. July 1950—where?

A. At his place of business.

Q. Did you have any conversation with him then?

A. Well, It was rather brief, I had an appointment elsewhere. I dropped in primarily to look over the shop facilities, and he mentioned to me at that time that he was rather tied up and that he probably couldn't accept any work for some months, for me to contact him some time in the future.

Q. Now I think you told us your conversation with Sobell in which you gave Rosenberg's address was in May of 1950?

A. Yes.

Q. Did there come a time in June of 1950 when you saw Sobell?

A. Yes.

Q. Where?

A. I saw him at his home.

Q. Did you go out there or did you go by appointment?

A. Well, I called him at his home to indicate that I needed an electric drill to do a repair around my home, and he mentioned then that he was getting ready to leave for a vacation in Mexico, and that he was leaving rather shortly and if I wanted the drill, for me to come out and get it.

Q. And did you go out to his house?

A. Yes, I did.

[fol. 1251] Q. Who was present when you arrived there?

A. He was, his wife, *his wife*, his sister-in-law and their children—and the children.

Q. What was the name of his sister-in-law, do you remember that?

A. I think it is Edith Levitov.

Q. What was the physical appearance of the home at that time?

A. Well, it was quite evident that there was packing going on, there were valises standing there. The rest of the house was not too disorderly.

Q. Was there any car in the driveway?

A. Yes, there was.

Q. What was the condition of the car?

A. Well, there were valises, some valises in the car. I think the trunk was open.

Q. Did you get the electric drill?

A. Yes, I did.

Q. Did you have any conversation with Sobell?

A. Very brief.

Q. What did he say to you in the course of that conversation?

A. Oh, merely mentioned the fact that he was leaving and——

Q. Did he tell you what means of transportation he was going to use?

A. Yes. He said he was flying.

Q. Did he tell you where he was going?

A. Yes. He said he was going to Mexico—Mexico City.

Q. Mexico City, is that right?

A. Yes.

[fol. 1252] Q. Did you thereafter leave the house?

A. Yes, I did.

Q. About when was this, would you say?

A. What is that?

Q. About what day in June was this, would you say?

A. Oh, the 20th of June.

Q. Around the 20th?

A. Yes.

Q. About how long were you at his home that night?

A. Oh, about 10 minutes.

Q. Did there come a time after that night when you heard from Sobell?

A. Yes, I did. I received a letter from him.

Q. How long thereafter?

A. About a week.

Q. Did you note the post-mark on that letter?

A. Yes, it was post-marked Mexico City.

Q. Now was this letter addressed to you at your home or your place of business?

A. At my place of business.

Q. Care of the Academy?

A. At the Academy Electrical Products Corporation.

Q. You noticed the postmark was Mexico. Now was there a return address on the envelope?

A. Yes, there was.

Q. Will you tell us what you remember concerning that return address?

A. The return address was M. Sowell.

[fol. 1253] Q. Sowell.

A. S-o-w-e-l-l.

Q. Do you remember the street?

A. No, I don't remember the street address but it was in Mexico City.

Q. Now, in the entire period of time of your acquaintance with Sobell, did you ever know him to use the name S-o-w-e-l-l?

A. I do not.

Q. Did you open the letter?

A. Yes, I did.

Q. Will you tell us what was inside of the letter?

A. There was a letter addressed to me and several enclosures.

Q. Do you remember the contents of the letter addressed to you?

A. It merely—the letter said "Dear Bill, had a nice trip, held the kid on my lap all the way, and located a place to stay". That was the contents.

Q. Now, were there any other communications to you in that envelope? This first one that you have described concerned only social pleasantries?

A. Yes.

Q. Is that a fair statement?
A. Yes.
Q. Were there any other communications in that envelope to you?
A. Yes, there was a note which said "Please fo-ward the enclosures and I will explain to you when I get back".
Q. "I will explain to you when I get back"?
A. Yes.
[fol. 1254] Q. About how many enclosures were there?
A. There were two.
Q. What were the enclosures?
A. One was addressed to a sister-in-law in Arlington, Virginia.
Q. Which sister-in-law was that?
A. Miss Edith Levitov.
Q. That was the one who was at his home that night?
A. Yes.
Q. Readying the trip to Mexico?
A. Yes.
Q. What was the other communication?
A. The other communication was a short note to his parents.
Q. Now, what did you do with the note to his parents?
A. I delivered it to their home.
Q. How about the note to his sister-in-law?
A. I placed it in an envelope and mailed it.
Q. Was there anything else in that envelope?
A. Well, on this note he said "Will you please deliver my address to Mr. Max Pasternak.
Q. Do you know who Max Pasternak was?
A. I knew he was related in some way.
Q. Did he repeat the address?
A. Yes, he did.
Q. What address did he give at which he could be reached?
A. M. or Morty Sowell with a street address.
Q. Is that S-o-w-e-l-l again?
A. Yes.
Q. And did you communicate with Mr. Pasternak?
[fol. 1255] A. Yes.
Q. Did you advise him under what name and address Sobell could be reached?

A. I didn't actually reach Mr. Pasternak. I delivered the note to Mr. Pasternak's residence.

Q. The note you had received from Sobell, is that right?

A. That is right.

Q. Did you respond to this letter from Sobell?

A. Yes, I did.

Q. At what address did you communicate with him?

A. I used the address which was the return address given to me.

Q. Under what name?

A. M. Sowell, or Morty Sowell in Mexico City.

Q. S-o-w-e-l-l? Is that right?

A. Yes.

Q. Did you get any further communication from Sobell?

A. Yes, I did.

Q. About when was the next one?

A. Oh, about two weeks after that, two weeks after the first one, sometime about the middle of July.

Q. And where did you receive the second communication?

A. At my place of business, the Academy Electrical Products Corporation.

Q. Did you notice the postmark on the envelope?

A. Yes. It was Mexico City.

[fol. 1256] Q. Did you recognize the writing on the envelope?

A. It was familiar to me as Morty Sobell's writing.

Q. Was there a return address*ed* on this envelope?

A. Yes, there was.

Q. Do you remember the name of the street that was mentioned?

A. Well, I have a recollection of Cordova or Corbova or some similar street address.

Q. What name was given on the envelope? Was Sowell used this time?

A. It was M. or Morty Levitov.

Q. M. or Morty Levitov this time?

A. Yes.

By the Court:

Q. Let me ask you in connection with these two return addresses, one of M. Sowell and the other of Morty Levitov, when the return address appeared on the envelope, was it M. Sobell in care of M. Sowell or Morty Levitov, or just the name M. Sowell?

A. Just the name.

Q. M. Sowell and the other one M. Levitov.

By Mr. Cohn:

Q. Did you open this second letter, the one with the name M. Levitov?

A. Yes, I did.

Q. What were the contents of that? Were there any papers inside the envelope?

A. Yes. There was a letter for me, an enclosure for Miss Edith Levitov and a short additional note which he asked me to forward, using somewhat similar phrase [fol. 1257] ology, "I will let you know about it when I get back".

Q. Let you know about what?

A. The note said "Please forward enclosure and I will explain when I get back". Somewhat similar to the phraseology used the first time.

Q. There was no explanation contained in the letter; merely the statement that there would be an explanation at some time?

A. Yes.

Q. Did you forward the letter to Miss Levitov?

A. Yes, I did.

Q. Was there anything else in the envelope?

A. No, there wasn't. That is, I made it clear that there was a letter to me.

Q. The one you described to us in which he said forward —

A. No. There was a letter saying "Dear Bill, I am having a nice time. I have moved from one place to another."

Q. He told you he had moved from one place to another?

A. Yes.

Q. You say you forwarded this note to Miss Levitov; is that right?

A. Yes, I did.

Q. Did you tell her how Sobell could be reached?

A. No, I did not.

Q. You merely forwarded the letter; is that right?

[fol. 1258] A. That is correct.

Q. Did you hear from him on any subsequent occasion?

A. No, I did not.

Mr. Cohn: No further questions.

Mr. E. H. Bloch: No cross.

Mr. Phillips: No cross.

Mr. Saypol: May we have a conference at the bench.

COLLOQUY BETWEEN COURT AND COUNSEL.

(The following proceedings took place at the bench out side the hearing of the jury.)

Mr. Saypol: I now have some testimony which it is possible there may be a stipulation on: The fact of the registration of Harry Gold at the Hotel Hilton on June 3. I have a photostat of the registration card. I also have the original on the way, together with a witness if required. I have testimony as to the bank records. Then I have a completely new phase of testimony which I will start. I can't start it until next week. There are witnesses on the way from distant places.

May I first inquire of counsel whether they will stipulate as to the records or whether they will insist upon strict technical proof?

Mr. E. H. Bloch: I am speaking for myself again: I am certainly not going to insist on strict technical testi [fol. 1259] mony. In other words, Mr. Saypol, let us understand: You want incorporated in the record a concession that Harry Gold stopped at the Hotel Hilton in Albuquerque on June 3, 1945.

Mr. Saypol: I want to offer in evidence and have received a copy of the registration card as a record regularly kept in the course of business and show it to the jury.

Mr. E. H. Bloch: I certainly have no objection to that introduction.

Mr. Kuntz: We have no objection.

Mr. Saypol: I want also to get together the bank records

and also that testimony showing the deposits of the various amounts of money as testified to by the witness.

Mr. E. H. Bloch: Well Mr. Saypol, I certainly am not going to dispute the bank records but I would like to look at them.

The Court: I think he is entitled to look at them.

Mr. E. H. Bloch: Yes, before I make the concession.

Mr. Kuntz: I imagine there will be no problem about that.

The Court: You are not going to object.

Mr. E. H. Bloch: Oh, no.

[fol. 1260] Mr. Saypol: Will your Honor declare a recess and I will get them together and upon resumption of the recess——

The Court: Yes. While we are up here, let us lay out the future of the case, and this is off the record.

(Further discussion at the bench off the record.)

(The following proceedings were had in open court in the presence of the jury.)

The Court: Ladies and gentlemen, we will take a recess at this point.

You may be excused.

(Short recess.)

[fol. 1261] (Jury in the jurybox.)

The Court: Before we proceed, would you like to offer those exhibits first, Mr. Saypol?

Mr. Saypol: If the Court will allow me.

The Court: Yes.

Mr. Saypol: We are at a phase in the trial now where there is certain evidence, documentary, as to which, of course, the Government has available a number of witnesses from distant places to establish the authenticity of the records, hotel registration records, bank records. If counsel for the defendants are agreeable, I shall proceed to put in evidence a document, rather, a photostat of a document, relating to the witness Harry Gold's presence in Albuquerque on June 3, 1945. Thereafter, I shall suggest to the Court that a recess be taken until the next adjourned day. At that time I shall have available similar docu-

mentary proof, which, of course, will be exhibited to the defendants, and if agreeable, again time will be saved by putting photostats of those documents in evidence, in relation to certain bank deposits.

So, may I now inquire of the defendants whether there is any objection to the offer in evidence of this photostatic record?

Mr. E. H. Bloch: As I have already indicated to the [fol. 1262] Court and to Mr. Saypol, the defendants have absolutely no objection to this document being used, and no objection will be made that it is secondary evidence, and we concede that whatever the document there says, it was made in the regular course of business by the party whose records it comes from.

The Court: You have no objection whatsoever to its introduction?

Mr. E. H. Bloch: No, none whatsoever.

Mr. Saypol: May it be marked then?

(Marked Government's Exhbiit 16.)

The Court: That is the registration of the Hotel Hilton?

Mr. Saypol: Yes. I will ask leave to read it to the jury and exhibit it to the jury, both the face and the reverse side of the photostat received.

May I proceed to read it to the jury?

The Court: Yes.

(Government's Exhibit 16 exhibited and read to the jury.)

Mr. Saypol: Now, perhaps if the Court is so disposed, I would ask leave to take the end-of-the-week recess at this time.

[fol. 1263] The Court: Ladies and gentlemen of the jury, what will happen from time to time during the course of a trial of this magnitude is sometimes the witnesses are disposed of a little quicker than is anticipated——

Mr. Saypol: I must interrupt, if the Court will allow me. I think when counsel were at the bench I advised the Court that I would be prepared to make certain answers to queries of the Court and I am so prepared if the Court desires me to.

The Court: Yes. There are some witnesses coming from distant places that aren't available as yet today, so we will

recess until Tuesday morning. We will not have a session Monday. We will recess until Tuesday morning.

Now before we do so I think it is fair that the jury have an idea of how much longer this case is going to take. Most of you are engaged in business and you are entitled to know it; and while I have somewhat of a reputation, probably undeservedly so, for moving a trial along, I didn't anticipate that I would be able to move it along with the dispatch that we have moved this trial.

Now, Mr. Saypol, about how much longer do you think the Government's case will take?

Mr. Saypol: Of course while the trial has continued I [fol. 1264] have considered the status of the case right along from the point of view of the prosecutor supplying the available evidence to establish that which is required of me. In a case of this type defendants have been, as provided in the statute, supplied with a list of witnesses, in the words of the law, to prove the indictment. I am satisfied now that on the presentation of my colleagues and myself I have proven my case to be——

Mr. Kuntz: Now——

The Court: What you are saying is in your judgement you are going to excercise your good judgment to do away with calling certain witnesses whom you consider to be merely cumulative—is that stating your position accurately?

Mr. Saypol: That puts it exactly. In other words, I have arrived at the point where I am close to a decision that anything further would merely be cumulative.

The Court: Of course you know how this Court feels about putting in cumulative evidence.

Mr. Saypol: Your Honor has indicated it to both of us, and I hope that I have demonstrated a disposition—I think the defendants, too—to move the case along.

The Court: Yes. Very well.

[fol. 1265] Mr. Saypol: That being so, I believe that next week, with the evidence to be elicited on the part of my colleagues and myself—next week or at the very latest, at the beginning of the following week—but no more than probably four or five more full court days I will be in a position to say to the Court that the Government rests.

The Court: In other words, you feel that at the outside the Government will need probably four more court days.

Mr. Saypol: That is my view.

The Court: And as I understand it, the defense, at the outside, will probably need five more days.

Is that a fair estimation?

Mr. E. H. Bloch: I think in the present posture of the case, that is approximate.

The Court: So it would appear, ladies and gentlemen, that there is a fair chance that the week after next this case might go to the jury—the week after next, and make your plans accordingly.

Now we have another thing that we might take up today in view of the fact that we are having an early adjournment, and that is the matter of next Friday, which is Good Friday.

Now, Mr. Foreman, what is the feeling of the jury on [fol. 1266] that?

The Foreman: Your Honor, we have agreed unanimously to work Good Friday morning.

The Court: To work Good Friday morning. Well, I think that I should congratulate you upon your industry, but let us hold that in reserve because I may decide to give you a holiday on that day.

All right, we will now recess—

Well, we will wait until after the jury has had an opportunity to see that exhibit. You may continue to look at it. Pass it around.

The Court is still in session.

(Jury completed its examination of the exhibit.)

The Court: Ladies and gentlemen, we will recess until 10:30 Tuesday morning. I wish you all a very pleasant weekend.

(Adjourned to March 20, 1951, at 10:30 a.m.)

[fol. 1267] New York, March 20, 1951;
10:30 o'clock a.m.

Trial resumed

Mr. Saypol: If your Honor will give me a moment to confer with counsel for the defendants I might save some time.

The Court: All right.

(Mr. Saypol confers with Messrs. Bloch and Mr. Kuntz.)

Mr. Saypol: Without objection I offer in evidence a photostatic copy of a ledger sheet together with a credit slip of the Albuquerque National Bank, Albuquerque, New Mexico, Savings Department, relating to the account of Ruth Greenglass, 209 North High Street, Albuquerque.

(Marked Government's Exhibit 17.)

Mr. E. H. Bloch: If the Court please, just to clarify the position of the defense, we have no objection to this exhibit being introduced because of the fact that it might be secondary evidence, but we ask the prosecution if the defense deems it advisable to use it any time in the future, to have [fol. 1268] the rest of the transcript of this account. I believe the prosecution has the rest of that transcript in its possession, is that correct?

Mr. Saypol: The account was produced by a representative of the bank and we shall be happy to make it available to counsel if they require it.

Mr. E. H. Bloch: Thank you.

The Court: You don't object to this on the basis either that a proper foundation has not been laid, aside from secondary evidence?

Mr. E. H. Bloch: No, I am waiving all of that.

Mr. Saypol: I have asked for the stipulation in order to dispense with the necessity for laying the foundation.

The Court: O. K.

Mr. Saypol: May I read a portion to the jury?

The Court: Yes.

Mr. Saypol: As the jury will see this is from the official records of the Albuquerque National Bank, Account No. 35169; name, Ruth Greenglass, whose signature is affixed,

whose address is given as 209 North High Street. It is stated that she works for the OPA, her husband in the Army. It is for the Albuquerque National Trust & Savings Bank, Albuquerque, New Mexico, and contains the first [fol. 1269] entry dated June 4, 1945, deposit, $400., balance $400., and attached to it is a credit slip for the deposit.

CANDLER COBB, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Colonel Cobb, what is your occupation?

A. I am the New York City Direct- of Selective Service.

Q. How long have you held that office?

A. Since January 1946, and under three different laws. As the laws expired then they were extended.

Q. That is, the laws that you refer to are the laws with relation to the administration of the draft or Selective Service?

A. In World War II the law was the law of 1940. It is now the law of 1948.

Q. And just for collateral comment I think you were once an Assistant United States Attorney, weren't you?

A. Yes, sir, under Judge Caffey.

Q. As the director of Selective Service *as* you the lawful custodian of the records of that system?

A. Yes, sir.

Q. Those records of course are maintained by your staff [fol. 1270] under your supervision?

A. That is right.

Q. Pursuant to subpoena duces tecum served upon you have you produced here the Selective Service file of one Morton Sobell?

A. Yes, sir.

Q. Do you have it with you?

A. I have the original here of the entire file, to which is clipped the original registration card.

Q. That file that you have produced contains all of the Selective Service records relating to this Morton Sobell, is that correct?

A. Yes, sir.

Q. At my request, Colonel, have you caused to be prepared a photostatic copy of the entire contents of that file?

A. That is right.

Mr. Saypol: I should like to offer that file in evidence and if there is no objection to substitute for the original in evidence a photostatic copy.

Mr. Phillips: Certainly, there is a serious objection. No foundation has been laid. There is no testimony of any kind to show that this in any way relates to the issues we are trying.

The Court: Is that the only objection, relevancy?

Mr. Phillips: It is incompetent and there is no foundation laid for this testimony.

[fol. 1271] The Court: Are you objecting to the basis of the foundation for the testimony?

Mr. Phillips: Yes.

The Court: You are not objecting to the substitution of photostatic copies for originals?

Mr. Phillips: No.

The Court: If I find it otherwise proper.

Mr. Phillips: No. I am assuming the photostats are like the originals.

The Court: I dare say at this point that I don't see the relevancy of it.

Mr. Saypol: The relevancy will come later, if the Court please. As an official record I had not anticipated that there would be any objection made. May I ask perhaps if the objection is that the file has not been linked with Mr. Phillips' client, the defendant Sobell? If so——

The Court: That is the objection.

Mr. Saypol: —I will pursue some additional inquiry.

The Court: No, no. He admits that it is the file of Morton Sobell, but as I understand it Mr. Phillips says he doesn't see its relevancy in this case.

Mr. Saypol: The relevancy will appear later. If there is no——

[fol. 1272] Mr. Phillips: I object to any introduction of

testimony, the relevancy of which will appear later. We have been doing that all during the trial and I have lost a lot of tracks which I have to later get together.

The Court: As I have said the Government can't prove its entire case from one witness or two witnesses.

Mr. Phillips: I agree.

The Court: But the entire case has to be put in and then dovetailed.

Mr. Saypol: May I ask a few additional questions of the witness?

[fol. 1273] *Mr. Saypol: May I ask a few additional questions of the witness?*

The Court: Go ahead.

Q. Colonel Cobb, from the file you have before you, what is the spelling of the name of the registrant?

Mr. Phillips: Just a minute. I didn't hear that question. Do you mind repeating it?

Mr. Saypol: I say, I want the full spelling of the first and last name of the registrant.

Mr. Phillips: How is that relevant, if your Honor please? I object to it.

The Court: I overrule it.

Mr. Phillips: Exception.

Frankly, I haven't seen what these files contain, and my objections are based purely on general questions of law, if your Honor pleases.

The Court: I don't know what that means.

Mr. Phillips: Well, it means I don't know whether those files are in any wise detrimental to the defendants or otherwise, but I think they are improper at this time.

The Court: I assume the Government wouldn't introduce it unless they intended it to be detrimental to the defendants.

[fol. 1274] Mr. Phillips: Unless they think so.

The Court: I say, unless they intended it to be.

Go ahead, you may answer the question.

Q. Go ahead, Colonel Cobb.

A. The questionnaire, the first name is "M-o-r-t-o-n" and the last name is "S-o-b-e-l-l." At the end of the questionnaire is a signature, spelled the same way, sworn to before a Notary, under a seal, notarial seal.

Mr. Kuntz: If your Honor please, we would have been very happy to concede the spelling, if that is what Mr. Saypol was trying to get at.

The Court: Well, he didn't think you would be happy to concede it, from Mr. Phillips' statements. If you would have been happy to concede it, you should have gotten up and conceded it.

Mr. Kuntz: Up to this point we were completely in the dark as to what Mr. Saypol's intention was from these records. If it is the name, we are ready to concede.

The Court: Wait a minute. Mr. Saypol, do you want to tell counsel privately what is the relevancy of these? Maybe they will agree on it.

Mr. Saypol: Not at this stage.

Mr. Phillips: Perhaps if they will show us the file —

[fol. 1275] Mr. Saypol: I would rather have them proceed, as they seem to indicate, adhering strictly to the rule, and I shall make my case.

Now, the first thing I shall do is ask that this photostatic copy of the file be marked for identification.

(Marked Government's Exhibit 18 for identification.)

Mr. Saypol: That I am sure counsel can't object to.

Q. Now, Colonel Cobb, refer to the questionnaire, about which you just told us——

Mr. Saypol: May that be marked for identification, perhaps, as 18-A, since the whole file is 18 for identification. Would you be good enough to mark that?

(Marked Government's Exhibit 18-A for identification.)

Q. Now, Colonel, the card on the face of the cover sheet.

A. Well, that is attached to the cover sheet for convenience. It is usually kept in a separate file.

Mr. Saypol: Mr. Schaeffer, would you mark that 18-B for identification?

(Marked Government's Exhibit 18-B for identification.)

Q. Now, Colonel, will you refer to the questionnaire, [fol. 1276] 18-A for identification, at page 11—I think it is printed page 7.

A. I have it.

Q. Do you find at the foot of page 7 the registrant's affidavit, together with his signature, "Morton Sobell"?

A. There is a statement, notarial statement, "District of Columbia, Washington, D. C.

"I, Morton Sobell,"—

then a signature and a notarial signature and a notarial seal, dated the 2nd of April 1941.

Q. Do you find any other place in the questionnaire to which is affixed the signature of Morton Sobell? That is the only place in the questionnaire?

A. That is the only place in this.

Q. Will you refer to Exhibit 18-B for identification. That is the card on the cover sheet. Do you find there at the foot the registrant's signature, "Morton Sobell"?

A. I do.

Mr. Saypol: Will counsel concede that that is the signature of their client, Morton Sobell, on 18-B and on 18-A for identification (showing)?

Mr. Kuntz: Yes, no question about that.

Mr. Saypol: Just bear with me for a moment, your Honor.

Q. Colonel, will you be good enough to look in the file, the [fol. 1277] original, and segregate various letters of which I show you photostats (handing).

(Witness complies.)

Mr. Saypol: Mr. Schaeffer, will you be good enough to mark these for identification?

(Marked Government's Exhibits 18-C, D, E and F for identification.)

Mr. Saypol: May I——

The Court: Are those letters?

Mr. Saypol: I beg your pardon?

The Court: Did you characterize them as letters?

Mr. Saypol: Communications, letters.

And while the clerk is marking those, if I may, I will show some others to Colonel Cobb and ask him to compare them with the originals and tell me if the file contains the

originals of the photostats which I show him (handing to witness).

(The witness examines file.)

Mr. Saypol: Mr. Schaeffer, will you likewise mark these seratim.

(Marked Government's Exhibits 18-G, H I and J for identification.)

Mr. Saypol: Meanwhile I shall ask the defendant Sobell for a concession that these various exhibits for identifica-
[fol. 1278] tion, C, D, E and F, are those of Sobell and in his handwriting (handing to Mr. Phillips).

Mr. Kuntz: Maybe we can save time here. If the purpose is to prove Sobell's signature we will be very happy to have Sobell write out his name now or anything else that Mr. Saypol wants. I do not know the purpose of this.

Mr. Saypol: The trouble is that Mr. Kuntz gets happy too late.

The Court: Well, I do not know the purpose of it either. Right now all he is asking for is a concession that that is his signature.

Mr. Kuntz: Well, the only way I can tell that is by consulting Sobell.

If Mr. Saypol had only asked us he would have got these concessions as he is getting now after some time.

(Mr. Kuntz confers with defendant Sobell off the record.)

Mr. Kuntz: No question as to his signature.

Mr. Saypol: How about the writing on the letters, Mr. Kuntz?

Mr. Kuntz: Sir?

Mr. Saypol: How about the writing on the balance of the letter? You conceded that the signature is your client's.
[fol. 1279] Mr. Kuntz: I am sorry, I did not ask Sobell about that. I would assume that it is but I will ask him.

(Mr. Kuntz confers with defendant Sobell off the record.)

Mr. Kuntz: He says they are all written in his hand, the originals of these photostats were written in his hand.

Mr. Saypol: Then we have the concession on the record. May we have the same concession as to G to J inclusive (handing to Mr. Kuntz)?

(Mr. Kuntz confers with defendant Sobell off the record.)

Mr. Kuntz: You may have that concession.
Mr. Saypol: Colonel, that is all, and thank you.

(Witness starts to leave the witness stand.)

The Court: Just a moment.
Any cross?
Mr. Kuntz: No cross.
The Court: Very well.

(Witness excused.)

The Clerk: Colonel John Lansdale, Jr.

[fol. 1280] JOHN LANSDALE, JR., a witness called in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Colonel, I take it you can speak up loudly so that we can all hear your testimony.
A. Yes, sir.

Q. Will you please try to dispel the common illusion about lawyers as witnesses. They say they make the worst. You try to be the best.
What is your education, Colonel?
A. I graduated from Virginia Military Institute in 1933 and from the Harvard Law School in 1936.

Q. You are a member of the bar, are you not?
A. Yes, sir.

Q. What did you do after you graduated from law school?
A. I went to Cleveland with a firm, Squire, Sanders & Dempsey.

Q. Did there come a time when you joined the United States Army?

A. Yes, sir.

Q. When was that?

A. In the latter part of May 1941 I was called to active duty as first lieutenant.

Q. What branch of the service were you assigned to?

A. I went on duty with the Military Intelligence Division, War Department, General Staff.

Q. That is what we commonly call G2, isn't it?

[fol. 1281] A. Yes.

Q. How long from 1941 did you remain in that branch of the service, that is, the Intelligence branch?

A. With the General Staff until January 1, 1944.

Q. And then what happened?

A. Then I was transferred to the Manhattan Engineering District Corps of Engineers.

Q. What did this Manhattan Engineering District deal with, what was its function?

A. The function of the Manhattan Engineering District was to produce an atomic bomb.

Q. And when did you first learn about that, that is, the object of the project?

A. In the latter part of December 1941 was my first knowledge of an atomic bomb project.

Q. Tell us how that knowledge came to you?

A. I was sent by my then chief, Major General Lee to see Dr. Conant, then Chairman of the National Defense Research Committee.

Q. C o n a n t?

A. That is right, and president of Harvard University, who was responsible for the research then going on looking toward the production of an atomic bomb, and he gave me an outline of the project and the specific assignment concerning it.

[fol. 1282] Q. So that by June or July 1942 you were directly concerned with that project?

A. That is correct, and it was—the assignment I got from Dr. Conant was a brief one and then in June or July of 1942, by which time the Manhattan District had been formed and the Army had taken over, General Groves asked me to be responsible for the security of the project.

Q. Well, what was encompassed in the assignment that you received from General Groves in regard to protecting the security of the project?

A. My assignment was while remaining as a member of the general staff organization to be responsible for all phases of the security of the atom bomb project; in particular to formulate policy, to conduct such investigations as were necessary to conduct and to procure personnel for direct assignment to the project to deal with security. I should state that General Groves was never one to give detailed instructions. He gave general responsibility and then expected to have it carried out under the initiative of the person he gave it to.

Q. I take it with that assignment you had a two-fold objective; the maintaining and protecting of security, a local one and a foreign one, isn't that so?

A. Yes.

[fol. 1283] Q. Will you explain that?

A. Of course, we were concerned to keep the existence of the project as well as the nature of it secret from all foreign powers, and I do mean all. Secondly, we were concerned to keep it secret within the United States from our own people and from the other branches of the service and divisions of the Government.

Q. Of course, the public, too?

A. Yes, sir.

Q. Now when you say you were required to keep it secret from other branches of the Government, what was done about the official designation of your assignment? Was that promulgated officially or was your assignment categorized or described in some way to conceal the fact that you were actually working on this?

A. As far as I know, there was never anything in writing on the subject until much later.

Q. It wasn't known other than secretly that you were in G-2?

A. That is right. As a matter of fact, in G-2, the only persons who at least officially knew about it was the assistant chief of staff of G-2.

(Mr. Saypol and Mr. E. H. Bloch conferred.)

Q. Now, you said a moment ago that one of the objectives was to keep this secret from foreign powers. As far as was known by you at that time or those associated with you was this matter, this whole subject an original [fol. 1284] one, or was it a subject within the knowledge of any foreign power?

Mr. Phillips: Oh, I object to that. How could he know what other people knew?

The Court: I will sustain the objection.

Q. Initially, did any foreign power participate in the project?

A. Not initially, no, sir.

Q. Did there come a time and, if so, tell me approximately when, when some foreign countries did cooperate in the project?

A. Great Britain and Canada later cooperated, and my recollection is that it started following the Quebec conference. I am a bit hazy in my recollection of that exact ders he gave. He wasn't the head of that project.

Q. In connection with the performance of your duties at this point, did you do anything or did you give any instructions or execute any orders in so far as the German military was concerned?

Mr. Phillips: I object to that as immaterial—what orders he gave. He wasn't the head of the that project.

The Court: Well, on that ground I will overrule it, but I take it you are attempting to ascertain the degree of secrecy or secrecy generally on this project—is that right?

Mr. Saypol: And I am trying also to bring out what this [fol. 1285] witness did to effectuate the official——

The Court: Effectuate security?

Mr. Saypol: Yes, sir.

Mr. Phillips: What he did to follow other people's orders may be all right, but the orders he gave are not official and not proven to be authoritative.

The Court: Oh, no, I don't agree with you at all. The mere fact that he had a superior, he has already testified, who gave him authority to devise a method of security, and as he says, General Groves was one who would merely

give you general responsibility and leave it to you to work out the details.

Mr. E. H. Bloch: If the Court please, I have no objection to any of the questions that have been propounded to the witness, but I was wondering in view of the questions that have already been asked whether or not this testimony is merely cumulative because we have in evidence Government's Exhibit 1. There is no dispute that the Los Alamos project was a restricted and secret project and we have the injunctions laid down for the various employees working around that project.

The Court: And also——

Mr. E. H. Bloch: And I can tell the Court I do not intend to dispute——

The Court: —secrecy.

[fol. 1286] Mr. E. H. Bloch: The secrecy of the project. Anything connected with Los Alamos was secret and restricted, even the names of the persons who were working there. I just inquire at this time as to whether we can save time, if the purpose of this witness's testimony is to reinforce that approach or that kind of evidence. I might say that I am willing to make a concession right here and now.

The Court: I think with that concession, Mr. Saypol, that the matter turned over, or the matter which the Government contends was turned over, if turned over, was of a secret nature; then I dare say that that phase of the case is supplied.

Mr. Saypol: And would have been and was of advantage to a foreign government.

Mr. E. H. Bloch: Well, of course, I can't concede, that, Mr. Saypol, because I just don't know.

The Court: Well, that is an element of the proof.

Mr. E. H. Bloch: I think it is, and if the purpose of Mr. Saypol is to elicit that kind of testimony from the witness then I certainly want to sit down. I don't want to stop Mr. Saypol from doing it.

Mr. Saypol: And what is more, I recall that only a day or two ago when testimony of this kind was brought out from [fol. 1287] other witnesses there was vigorous objection on the part of the defendant Sobell. So I have to prove my

case. At least I have to do it adequately as I think it necessary.

Would you be good enough, Mr. Reporter, to read the question to which there was objection?

(Question read as follows:)

"Q. In connection with the performance of your duties at this point, did you do anything or did you give any instructions or execute any orders in so far as the German military was concerned?"

[fol. 1288] Mr. E. H. Bloch: Now, if the Court please, I object to that upon the ground that it is not related to the issues in this case. If it is the purpose of this question to elicit from this witness proof that this might be of advantage to a foreign power, I will withdraw my objection, but in the form in which it is propounded, I don't quite see it. I am trying to project my mind backwards to this particular time.

The Court: Is the purpose of this question intended to show an advantage to a foreign power?

Mr. Saypol: Indeed.

A. Yes, sir. We did this. We believed that the Germans were working on the atomic bomb and were far in advance of our efforts. We believed also that should information as to our having undertaken in any major way work on an atomic bomb, if this were to leak out to the Germans, it would result in a redoubling of their efforts, as well as efforts on their part to ascertain what we were doing, and might well in and of itself defeat our objective. Therefore, our security, initially, was directed with that thing in mind, and one of the primary things that we undertook then to attempt to keep secure the concentration in any one location of a number of prominent scientists who were engaged in this research, and the purpose of that was this, that the [fol. 1289] identity of those scientists who could do advanced work on nuclear fission or the production of the atomic bomb were generally known throughout the world, and the concentration or location of them in any one place would have given considerable information to anyone. Indeed, that was the way in which we ascertained, as time

went on, the extent and nature of the German effort on the atomic bomb.

Q. In other words, you knew the identity of the scientist and you knew what he was working on?

A. That's right.

Q. That is, those versed in the science could readily use that as a means of detection?

A. That's right.

Q. So that for that purpose, I take it, one of the efforts was to keep the identity of the scientists a secret?

A. That's right. The identity of them, as together with one location, with one or two exceptions, where the individual identity was important.

Q. I take it that you first came to Los Alamos in connection with the Project sometime in 1943; is that so?

A. Yes, sir; that is my recollection.

Q. At that time, what was the state or progress in the construction of the Project?

A. It was then beginning. My recollection is that we [1290] started construction up there early in 1943 and we first started work—when we first started work out there, much of the work and the offices were down in the City of Santa Fe. Then by summertime the initial construction We called it then and throughout the Project "Site Y". had been completed and work was going on at the site. We called it then and throughout the Project "Site Y".

The Court: What did you call it?

The Witness: "Site Y."

Mr. Saypol: "Site Y."

Q. I think the Project was likewise known as "Project Y," wasn't it?

A. Yes.

Q. That is, Los Alamos, as a physical locality, was known as "Site Y" and the work going on there was known as "Project Y"?

A. That's right; Los Alamos was the name of the boy's school that had operated the site and had operated there, but we never used that name.

Q. How large was the reservation?

A. My recollection is, it was quite large, around 50,000 acres.

Q. Now, I think you were there until sometime in the fall of 1945, were you not?

A. I was not at Site Y; I was with the Project until then.

Q. Will you tell us something about the security regulations which were effectuated under your supervision?

Mr. E. H. Bloch: Well now, if the Court please, I think this is cumulative, although that is not a perfect legal [fol. 1291] objection, but I rise to save time.

Mr. Saypol: If I may, I prefer to put it in from one who in a real sense is a corroborative witness and who gave the directions and saw them enforced and can give them in more vivid detail and more realistic detail than the witnesses who have testified.

Mr. E. H. Bloch: May I have a voir dire question on this, your Honor, just one?

The Court: Just a moment.

You see, the question of whether it was secret and whether it was intended to be of advantage to a foreign nation so closely interwoven with one another that it is difficult in some places to separate them. For example, this testimony that was just given, concerning the names of scientists that were working on the Project, now, that was secret and it would appear that he was merely repeating that that was secret. But actually, as the testimony unfolded, it appeared that that would be an advantage to a foreign nation if it were known, for the reasons that he stated. So it is hard to close it off because it is secret and because you have already conceded that it is secret, because it might also prove this other element, which you are not conceding.

Mr. E. H. Bloch: If the Court feels that way, I don't want to object. I just rose to save time.

[fol. 1292] The Court: All right, and I am in favor of that wherever possible. You know that.

All right.

The Witness: May I have the question?

Mr. Saypol: Yes.

Mr. Reporter, will you be good enough to find the last question, as to which there was objection, and reread it?

(Question read.)

A. Are you referring to the entire Project, or to Site Y?

Q. Let's start with the entire project. Was there special military police detachment included?

A. You mean, the Site Y Project, Los Alamos?

Q. Yes.

A. Well, first, administratively, Site Y was segregated from the rest of the district so that its control and direction was from General Groves' office rather than through the organization of the Manhattan district itself, of which, administratively, both, from an administrative standpoint and the security standpoint, were handled by the district organization. That was primarily for security purposes.

Secondly, since Site Y was our most and important Project, we took extraordinary measures for its security. That began with the selection of the site itself. The reason [fol. 1293] for going out on this lonely mesa, in the wastes of New Mexico, was because it was isolated, because there was only one—there were only one or two means of access to it. The first thing we did was to recruit an especially selected military police detachment, whose sole job was the physical guarding of the place. We established very strict regulations as to entrance to it and exit from it. We established separate areas within the Project itself. The most important one of which, or one of the most important ones of which was the area enclosed in a high wire fence, called the "Technical Area", which was separately patrolled and guarded from the rest of the Project. We established censorship of mail. We established censorship of telephone conversation. We placed undercover agents in all of the surrounding towns. We placed restrictions upon the movements of the people that was there, in their social intercourse. We tried to be extremely careful in the selection of personnel that went there, although as the pressure of time, as time went on and the pressure of speed became greater, these things tendered to be—the care of the selection of personnel tendered to be relaxed somewhat; and most important of all was the continual attempts to indoctrinate the personnel themselves, because [fol. 1294] after all, the only real security lies in the discretion of the people who have the information.

Q. With respect to the Technical Area, what external precautions were taken to protect secrecy?

A. Well, the most obvious one was the selection and identification of personnel who were admitted to the Technical Area and to various portions of the Technical Area. The Technical Area itself was divided into areas. We had a badge system, whereby persons who could enter various portions of the Project were designated. In addition, we had, of course, guards at the gates and patrols around the outside.

Q. When you say "guards at the gates," were any special fences erected around those technical areas?

A. Yes, there was a high wire fence around that entire area and that fence was patrolled at all times.

Q. With but a single means of entrance and exit?

A. That is correct.

Q. With respect to personnel, particularly those in the technical areas or in the Technical Area, was any effort made to bring home the importance of the fact of maintaining secrecy?

A. Every effort we could, sir. Every person, both civilian and military, who went, who was admitted to the Technical Area, either temporarily or for the duration of the Project, [fol. 1294a] was interviewed before hand. They were given a small condensed directive of rules of security. They were talked to at every opportunity, both by security personnel and by their own superiors. In short, we made every attempt that we could to indoctrinate these people and continually impress upon them the absolute necessity for security.

[fol. 1295] Q. Was the actual work and development, both experimentally and any other type, compartmented? Did you ever hear that word?

A. Yes, sir.

Q. What is that? How was that applied there?

A. Well, what we call compartmentalization was one of the basic security policies adopted. That, in brief, was this: that no one should know any more than he absolutely had to know to do his own job, and we attempted to set up the project an dindividual parts of the project in cells or compartments, with one compartment not knowing what the other one was doing, to the extent that we were able to segregate them, and each person was particularly impressed with the necessity of being secure even with re-

spect to those whom he knew to be working on the project and working on a highly secret phase of it.

For example, one of the most obvious things was that only the people in the upper levels of the project were actually told what they were working on. There is no question but that a lot of very intelligent scientists deduced the object of the project but they were never told, and one of the parts of indoctrination was to caution people against speculation or expressing ideas as to what they may deduce as to the object of the project or the particular thing [fol. 1296] upon which they were working.

Q. Now when you talk about this effort to segregate activities of individuals or groups into compartments, would it be an apt illustration to say that the object was in development to keep the right hand from knowing what the left hand was doing?

A. Precisely.

Q. It comes down to that, is that right?

A. Yes, sir.

Q. Now did it go so far—I will withdraw that.

Q. As an illustration of the keen determination to keep this secret, can you tell us whether the phrase "atomic bomb" was used in correspondence?

A. Never to my knowledge.

Q. Or in memoranda?

A. Never, and instructions were that it was not to be used—instructions to those people who knew what we were working on were that it should never be used—that or a number of other revealing words or phrases, such as nuclear fission.

Q. In the official intercourse connected with this development, it is the fact, isn't it, that the President of the United States maintained a direct contact with all phases?

A. Yes, sir.

Q. You know that as liaison officer of General Groves?

A. Yes, sir.

Q. Well, what was the practice in correspondence with [fol. 1297] the President in regard to the description of the project or the bomb itself?

A. These words were seldom, if ever, used. In no report to the President which I saw, and I saw most of them were these words ever used. Indeed, the President had

personally directed that this project was the one with the highest order of secrecy of any project which the Government had undertaken.

Q. How long did that practice continue?

A. Until the dropping of the bomb on Hiroshima on August 6th, 1945.

Q. Now let us go back for a moment, if we may, to the matter of the identity of the scientists who worked on the development of the bomb, both before and after Hiroshima. What was your policy in regard to the identity of scientists?

A. We attempted, in so far as that was practical, to keep their identity secret, particularly their—particularly two things: No. 1, their concentration in any one location, and, No. 2, the connection of one or two very prominent internationally recognized scientists, such as Neils Bohr, with the project.

Q. Well, what did you do about identifying them?

A. We used fictitious names, particularly when they were traveling. Neils Bohr, for instance, was given the name [fol. 1298] Nicholas Baker. We soon found it impractical to use names which did not have their own initials.

Q. At that time, engaged in the Intelligence work which you told us about, did you give any attention to the identity of foreign scientists, to ascertain the activity of foreign governments in respect to this subject?

A. Yes, sir. As I stated, that was the primary lead to the determination of what the Germans were doing, and we did find out precisely what they were doing, primarily through that means.

Q. In other words, you found out who were working on it in Germany, you found out where they were working on it?

A. No, sir. We took the list of scientists who were known to have the capacity to do work of this kind, ascertained where they were, and ascertained their travels and the locations in which they habitually worked.

Q. And so you learned that foreign governments were very much interested in this subject and were working on it?

A. Yes.

Q. Did that apply to the Russian Government, too?

A. We never had any knowledge that the Russians were working on it. However, I should state that——

Mr. E. H. Bloch: If the Court please, I think the answer is complete and I think with the best intention of the wit-
[fol. 1299] ness he may state somthing which——

The Court: All right. You have no objection thus far as he has gone?

Mr. E. H. Bloch: No, I have not.

The Court: The answer stands as is.

Mr. Saypol: I beg your pardon?

The Court: The answer stands.

Mr. Saypol: I should like to know what they did find out, as a result of which he took official action.

The Court: All right.

Mr. E. H. Bloch: The reason I rose at the time I did, your Honor, is because this witness stated that he did not know of his own knowledge what they did.

The Court: He was about to tell us what he did find out, though.

Mr. E. H. Bloch: In the course of his official duties?

The Court: That is right.

A. (Continuing) We did ascertain, however, that the Russians were much interested in what we were doing.

Q. Now coming back——

Mr. Kuntz: I move to strike that out, your Honor, as not responsive.

The Court: No, I will let it stand.

Q. At that time what official knowledge did you have
[fol. 1300] concerning the identity and background of Neils Bohr?

A. Neils Bohr was a Danish scientist whom I can best describe as being the pioneer and granddaddy, you might say, of nuclear physics. He had an international reputation in the field in which the project was interested.

Q. In connection with his activity—I will withdraw that.

Q. There did come a time when he arrived at Los Alamos and participated in the research connected with the development of the atomic bomb, is that right?

A. Yes, sir. He went to Los Alamos as a consultant.

Q. In connection with the maintenance of secrecy of his identity and activities, what steps were taken in the course of his arrival ultimately at Los Alamos?

A. Two primary steps were taken, or three: One was, while he was still in England, he was given a fictitious name to be used in every instance in which it was necessary to communicate concerning his connection with our project.

Secondly, he was given a covering purpose for visiting this country which, as I recall it, was the Rockefeller Foundation.

Thirdly, those on our project who knew him by sight were, so far as we could ascertain them, strictly enjoined [fol. 1301] not to mention or disclose in any way his connection with the project. He was so well known for his work on nuclear fission and so important a figure in that field that we believed that disclosure of his visit to Site Y, which was his primary purpose for coming to this country, would be a dead give-away.

Q. Ultimately he came to Los Alamos, and I understand a pseudonym, a fictitious name, was given to him?

A. That is right; Nicholas Baker.

Q. Were such directives issued under your authority?

A. Yes.

Q. By your subordinates?

A. I directed the District Intelligence Officer, who at that time was Captain or Major Calvert to issue a secret directive to his principal Intelligence officers to that effect and also conferred with J. Robert Oppenheimer, the Director of Site Y, and asked him to caution all of his personnel themselves who knew Neils Bohr, to that effect.

Mr. Saypol: Would you mark this, please, Mr. Schaefer.

(Marked Government's Exhibit 19 for identification.)

Q. I show you Government's Exhibit 19 for identification and ask you if you recognize it, Colonel (handing)?

A. Yes, sir. That is the Directive of the District Intelli- [fol. 1302] gence Officer to which I referred, and it was written in my presence at Oak Ridge.

Mr. Saypol: I offer it in evidence.

Mr. E. H. Bloch: No objection.

(Government's Exhibit 19 for identification received in evidence.)

The Court: Are you going to read that?

Mr. Saypol: I will hand it to the jury, if I may, and the jury will examine it.
The Court: All right.

Q. That, I take it, Colonel, is a duplicate original of the Directive as it was issued?
A. Yes.
Q. That is, referring to Government's Exhibit 19 in evidence.
A. That is right. The green copy was the retained duplicate original.
Q. That is the filed copy?
A. Yes.

Mr. Saypol: May I exhibit it?
The Court: All right. I thought you were going to read it to them.
Mr. Saypol: All right, I will read it, then.

(To jury) Exhibit 19 is stamped "Secret" on top and bottom and is dated the 4th of February, 1944 (reads to jury).

And then written on are several names and places to which this Directive is ordered.

[fol. 1303] (Mr. Saypol hands exhibit to the jury.)

Q. From time to time were written security regulations issued?
A. Yes, sir, particularly relating to the security administration, you might say.

Mr. Saypol: Would you mark that, please, Mr. Schaefer.

(Marked Government's Exhibit 20 for identification.)

Q. Colonel, I show you Government's Exhibit 20 for identification and ask you whether these regulations were promulgated under your supervision (handing)?
A. Yes, sir. I have previously examined this and this is a copy of the general security regulations written and revised by the District Intelligence Officer at Oak Ridge and specifically approved by me prior to their issuance.
[fol. 1304] Q. May I have that for a moment?
A. (The witness hands to Mr. Saypol.)

Q. To whom did you say these regulations were directed?

A. They were disseminated generally to project personnel.

Mr. Saypol: I offer this in evidence.

Mr. E. H. Bloch: No objection so far as the defendants Rosenberg are concerned.

Mr. Kuntz: No objection.

(Marked Government's Exhibit 20.)

Mr. Saypol: Does the Court desire to examine this before I read it to the jury? I would like to read excerpts to the jury, if I may.

The Court: Do you want to do that now or take a recess at this point?

Mr. Saypol: Whatever the Court's pleasure is.

The Court: Will the reading be very lengthy?

Mr. Saypol: It may take a few minutes. Perhaps the jury may want to recess now.

The Court: We will take our morning recess at this point, ladies and gentlemen.

(Short recess.)

By Mr. Saypol:

Q. Colonel Lansdale, I think you told us about Exhibit 20 as the over-all regulations document at the proj- [fol. 1305] ect?

A. Yes.

Q. Now there is in evidence here Government's Exhibit 1 which likewise contains information relating to security, and I take it that its contents are a projection of this over all document? Is that correct?

A. Yes, with specific application to Site Y, or Los Alamos.

Mr. Saypol: If I may now, I will read a few portions of this exhibit, Government's Exhibit 20.

Ladies and gentlemen, Government's Exhibit 20 is marked "restricted" at the top and bottom and it is entitled "Safeguarding military information regulations". It is dated the 27th of November 1943, revised the 1st of September 1944. It bears the title "Intelligence Bulletin No. 5, Manhattan Engineer District".

(Mr. Saypol read from pages 1, 2, 3, 4, 5, 9, 14 and 16 of Government's Exhibit 20.)

Q. Colonel, when did you sever your connection with the Manhattan District project?

A. I went on terminal leave November 15, I believe, 1945, and at that time severed my connection with the project except for a period of time as a civilian consultant.

Q. Reverting to the time when you were officially assigned to the project, do you recall experimentation in connection with a high explosive lens?

[fol. 1306] A. Yes, sir, I do.

Q. Do you recall that that experimentation was conducted under the supervision of Dr. Koski?

A. Yes. Dr. Koski was a subordinate, as I recall, of Dr. Kistiakowski, under whose general direction the work was.

Q. When you say he was a subordinate to Dr. Kistiakowski, you don't mean he was a subordinate employee; rather, he was a top scientist there.

A. Oh, yes.

Q. You mean that in point of rank he was next to Kistiakowski?

A. That is right.

Q. In the flight of the upper level?

A. Yes.

Q. Was the experimentation pertaining to the high explosive lens classified as secret?

A. Oh, yes, sir, top secret.

Q. And what was the situation from the security standpoint with respect to the general layout of the buildings comprising the project? Was that likewise secret?

A. Yes. The people were instructed that no information relating to the specific location of buildings or general layout and so on should be disclosed. That was a rather elementary precaution from a sabotage standpoint. Likewise, for similar reasons we made that area restricted to aircraft; no aircraft was permitted to fly over.

Q. No aircraft was permitted to fly over Los Alamos [fol. 1307] Reservation or the technical area? Which was it?

A. The Los Alamos Reservation. That was marked on all air maps as a military area, forbidden to aircraft.

Q. What was the situation with respect to the general description or any kind of description pertaining to the atomic bomb from the security standpoint?

A. Oh, that was all definitely very secret.

Q. You have told us of the precautions which were taken under your supervision to maintain the secrecy of the experiments of the bomb, of the scientists who were connected with its development. In the effectuation of those policies under your supervision, did you take into consideration the likelihood of advantage to a foreign power?

A. Yes, that was our primary consideration.

Q. That is, you considered that that information would be sought and would be advantageous by a foreign power.

A. We so considered.

Mr. E. H. Bloch: Just a minute. I object to the form of the question, one, on the ground that it has already been answered, and upon the additional ground that it is improper in form. There is something in the question which struck my ear about the impropriety of the form. I wonder whether the stenographer can re-read the question so that I can state my second ground.

[fol. 1308] The Court: Just hold it a minute.

All right, read the question.

(Question read.)

Mr. E. H. Bloch: Well, now, I clarified my thoughts on my second objection. I submit, your Honor, that Colonel Lansdale has not been qualified as an expert, as to whether or not this information would be advantageous to a foreign power, except in so far as he, in the course of his official duties, considered or was instructed that this information would be advantageous.

The Court: Well, let's find out whether he was in his official duty.

Mr. E. H. Bloch: I don't want to appear technical here, your Honor.

The Court: No, of course not.

A. Well, I can clear that up.

Mr. Saypol: Just to make the record clear, I don't want this evidence this knowledge from Colonel Lansdale, on the basis of his qualifications of a lawyer. I want them on

the basis of the fact that he was officially charged with the responsibility for maintaining this security.

Mr. E. H. Bloch: On that ground, I have no objection.

Q. Mind you, I don't mean your qualifications as a law-
[fol. 1309] yer, Colonel Lansdale.

A. I can, I think, state my knowledge and my beliefs in that regard. No. 1, I believe, and No. 2, it was the expressed opinion of the chief of staff of the Army that this weapon, should we be able to develop it, would be decisive of this war and decisive on the question of the future security of this country.

Q. And that mainly was the basis for keeping it, doing everything possible to keep it away from any foreign country, any foreign nation?

A. Yes.

Mr. Saypol: You may examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. Colonel Lansdale, just a few questions. In the course of your official duties as one of the top security officers or in military Intelligence, did you come to hear about or know about an employee of the Los Alamos project, known as Dr. Klaus Fuchs?

A. No, sir; at the time I have no present recollection of having known him.

Q. Well, now, now knowing from what you have read, can you project your memory backwards and tell us whether or not it isn't the fact that there was a Dr. Klaus Fuchs working on that project?

Mr. Saypol: I think counsel and the witness are confused. I think the witness thinks that counsel is asking
[fol. 1310] whether he knew Klaus Fuchs, not whether he knew about him.

Mr. E. H. Bloch: All right, I will reframe the question.

A. Oh, yes. Well, I can answer definitely. I knew about him. We got periodic lists from the British of their people and he was without question one of them.

Q. And he was a scientist, was he not, who was assigned to work on the Los Alamos project, upon instructions or authorization from the British Government?

A. Yes, sir; he was a member of the British group at Site Y.

Q. At Site Y.

A. Yes.

Q. That is, at Los Alamos project?

A. Yes.

Q. Now could you tell us whether Dr. Klaus Fuchs was assigned in discharging his duties there to the technical area?

A. Yes, sir.

Q. Have you any independent recollection of when Dr. Klaus Fuchs came to Site Y or the Los Alamos project?

A. No, sir, I do not.

Q. Well, would it refresh your recollection if we specifically talked about the year 1944? Do you know whether he was there in 1944?

A. All I could do would be to speculate. There was considerable activity during that year and it would be sheer speculation.

[fol. 1311] Q. Now, isn't it an accurate statement that the most stringent security regulations were set up by the government of the United States with respect to the Los Alamos project?

A. I can answer that yes, but I would like to make one qualification, if I may.

Q. Any qualification you want.

A. We were required to accept the British scientists upon the representation of the British Government that they were cleared, investigated.

Q. But apart from that, I am talking now about the control of the United States Government over this project. Is it not a fact that every possible precaution was set up by the United States Government to insure the secrecy of the Los Alamos project?

A. Every one that we could think of, always balancing the necessity for speed.

Q. And, in connection with the implementation of that perspective and that policy, there were certain regula-

tions, such as Government's Exhibit 1, and the last exhibit, I think, which you identified—I don't know its number——

The Court: No. 20.

Q. No. 20. No. 20, isn't that correct?

A. If they are those security regulations, that is correct.

[fol. 1312] Q. Now, in implementing these regulations, is it not a fact that every employee who worked in the technical area had his mail censored?

A. That is not quite a correct statement. It was taken on a percentage basis. A certain percent of all mail was censored. All mail of all persons about whom we had any suspicion was censored, but except at the very beginning of the project—at the beginning of the project we censored all mail. As the project went on, we did it on a percentage basis, I have forgotten just what percent it was.

Q. Sort of a spot-check?

A. That is right

Q. Now, Colonel, I would like to direct your attention to the period between August '44 and the latter part of November 1944, and ask you whether or not at that time there was censorship of the mail of the employees working in the technical area, whether in terms of complete censorship, or censorship, or spot-check censorship, or whatever the fact may be?

A. Yes, sir; that is my recollection.

[fol. 1313] Now, what would you say (that there was a complete censorship during that time?

A. I believe we had gone on the spot-check basis at that time.

Q. On the spot-check. At any rate, Colonel, no employee at Los Alamos Project had a post office address which would indicate that he was working at Los Alamos Project, isn't that right?

A. Generally speaking that is true except in so far as a post office box in the City of Santa Fe would so indicate. They were directed to give a certain office box, 1663, as I remember.

Q. That is correct.

A. Santa Fe.

Q. Now, how many miles was the Project from Santa Fe?

A. 30 or 35, about that.

Q. And how many miles was the Project from Albuquerque?

A. Well, Albuquerque is about 60 or 70 miles from—south of Santa Fe, and by road you can just add the extra 30 on. That makes about 100 miles.

Q. Now, you made at least as serious an attempt to censor the mail of employees during the period from August 1944 to November 1944 as was practically expedient?

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. And not only did you attempt to censor the mail to satisfy yourselves that no leak was coming out of there [fol. 1314] but you also attempted to keep surveillance over employees working in the Technical Area in so far as telephone calls were concerned, isn't that right?

A. Yes, sir. We monitored many telephone calls, again on a spot-check basis.

Q. And that was also true with respect to telegrams?

A. Yes, sir. Telegrams went through our office, as a matter of fact, as I recall.

Q. Now, was Neils Bohr, the famous scientist working on the Project in August 1944?

A. It was during the year 1944 that he was here. He first came to this country—no, I can't answer that question.

Q. Now there has been testimony here——

A. He came early in 1944, and I can't remember when.

Q. Well, is it your best recollection that he came to the Project prior to August 1944?

A. That is my best recollection but I must confess I am a bit uncertain.

Q. And would you say that he stayed at the Project at least a couple of months working there?

A. I don't think he ever stayed at the Project for that extended a period at one time. I could be wrong about that but he came several times and on a somewhat temporary basis.

Q. In other words, his visits to Los Alamos were sporadic but he did come back time and time again in order to do work on the Project; is that a fair statement?

[fol. 1315] A. That is my recollection.

Q. All right. I would like to ask you this question, Colonel: Was it part of the regulations at Los Alamos, as interpreted and as implemented, that a machinist in the service of the United States Army, working at Los Alamos Project would have knowledge of the true identity of Neils Bohr during the period from August 1944 to the latter part of November 1944?

The Court: That is very ambiguous. You asked whether it was part of the regulations whether he would have it?

Mr. E. H. Bloch: Let me reframe it, let me reframe it.

Q. Was it forbidden to a machinist working in the Technical Area during the period from August 1944 to the latter part of 1944 to have any knowledge of the true identity of Dr. Neils Bohr?

Mr. Saypol: Just a moment: I don't know how that question can be answered.

The Court: I don't either. What you are trying to ask him is, was it forbidden for anybody to tell it to him. That is what you are trying to ask.

Mr. E. H. Bloch: Was it forbidden for him to know and was it forbidden for anyone to tell him?

The Court: Well, it was forbidden for him to repeat it [fol. 1316] if he found out that it was forbidden for anybody to tell him.

Mr. E. H. Bloch: That is correct. That is what I am getting at.

The Court: But supposing someone told him—if somebody violated the security regulations, he would know but it would be forbidden for him to repeat it.

Mr. E. H. Bloch: That is correct.

The Court: I think you had better break that down.

Mr. Saypol: There are further objections to it because I can readily envision that one might properly learn of the identity of Bohr just as Greenglass might learn of the identity of Koski.

The Court: Well, I have practically covered that situation.

Q. Was it forbidden during the period from August 1944 to the latter part of November 1944 for any employee

working at Site Y, or the Los Alamos Project—especially in a technical area—to reveal to anybody the true identity of Dr. Neils Bohr?

A. Yes, sir, I would say that is a fair statement.

Q. And that prohibition would apply to a machinist working in the Technical Area?

The Court: It applied to everybody.

[fol. 1317] Q. To everybody?

A. Yes.

Q. Even the top scientists working on the Project, isn't that right?

A. Yes.

Q. Now, would that prohibition during the period we are talking about, that is June 1944 to the latter part of November 1944 also apply with respect to the true identity of Dr. Harold Urey?

A. Yes, sir.

Q. And would that prohibition during that period likewise apply to Dr. Oppenheimer?

A. Oh, yes, sir.

Mr. E. H. Bloch: I think that is all.

(The following took place at the bench.)

Mr. Saypol: This is a security matter which relates to the atomic bomb. The witness is going to establish the authenticity of the information that Greenglass gave to Rosenberg. I think your Honor will want to take the same precautions as have been taken heretofore, perhaps even more. Under those circumstances I submit that to your Honor's consideration.

The Court: This witness is I take it is going to repeat——

Mr. Saypol: I am going to read him the description as given by Greenglass.

The Court: And you are going to ask him what?

Mr. Saypol: Have him establish the authenticity of the cut-away sketch that he gave Rosenberg in September [fol. 1318] of 1945.

The Court: This is off the record.

(Discussion between Court and counsel at the bench off the record.)

(The following took place in open court.)

JOHN A. DERRY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Ladies and gentlemen, we are coming to another portion of testimony where I feel compelled to clear the courtroom. As I told you once before and I repeat, during the course of some cases, particularly a case of this character, while it might be in the interest of the country that we do not hear certain portions of testimony, yet, under our form of jurisprudence the defendants are entitled to absolute confrontation of every witness and every piece of evidence that is offered against them.

So with that in mind I am going to ask everybody but the press to leave the courtroom.

(All spectators leave the courtroom.)

The Court: I might also say, Mr. Stenographer, that with respect to that portion of the testimony that deals with the operation of the atomic bomb there is to be no trans-
[fol. 1319] cription made, and your stenographic minutes are to be considered impounded. Of course, if any counsel wants to have it read back for purposes of examination, it may be made available for that purpose.

Mr. Saypol: Would your Honor direct the clerk to unseal the testimony of Greenglass so that I may use it in my examination?

The Court: Very well.

Mr. Saypol: Let the record show that the direction is given.

The Court: You mean the testimony with respect to the atomic bomb?

Mr. Saypol: Yes, if the Court please. I haven't got a transcription of Greenglass' related testimony, and I will have to ask Mr. Slavin to read for me at the appropriate time, or to get his colleague, whoever it was who took the notes to read it.

Direct examination.

By Mr. Saypol:

Q. Mr. Derry, you are an electrical engineer, are you not?

A. Yes, sir.

Mr. Saypol: I should like the record to show that representatives of the Atomic Energy Commission are present in the courtroom and I take it the Court will allow them to be here?

The Court: Yes.

[fol. 1320] Mr. Saypol: I don't think they need be identified unless the Court desires.

The Court: No. Are they the same men who were here before?

Mr. Saypol: Yes.

The Court: They have been identified once before.

Q. What college did you graduate from?

A. I graduated from Rose Polytechnique Institute, Terre Haute, Indiana, June 1929 with degree of Bachelor of Science in electrical engineering.

Q. Thereafter did you obtain employment?

A. Immediately after leaving this school I worked for the Ohio Bell Telephone Company in Cleveland for about five months, and from there I went with the Pennsylvania Railroad Company on the electrification construction between New York and Washington. I was with them until January 1936. Would you like to have me go on?

Q. Yes, you might. It will make it a little easier.

A. At that point I became employed by the Rural Electrification Administration, United States Government, on engineering, designs, provision, construction and operation of rural electric lines. I was with them until my reserve commission that I got when I went to school was activated in April 1942.

[fol. 1321] Q. So you became an Army officer?

A. I became an Army officer.

Q. With what rank?

A. I came in as a 1st Lieutenant.

Q. How did you come out?

A. Lieutenant Colonel.

Q. When?

A. August 1946.

Q. So that from 1942 to 1946 you were in the United States Army?

A. Yes, sir.

Q. Did you receive an assignment in December of 1942?

A. I did. I was assigned to the Manhattan Engineer District.

Q. How long did you continue there?

A. I was with them in one job or the other until I got out of the Army in August 1946.

Q. Well, until April 1944 you were at Oak Ridge, were you not, as assistant to the Area Engineer?

A. Yes, sir. When I went in the Army I went into the Chief Engineer's Office in Washington, and in December was assigned to the Manhattan Engineer District and went to Oak Ridge and was there until April 1944.

Q. Did you receive another assignment then?

A. Yes. I was assigned back into General Groves' office as his liaison officer working betwen Washington, between General Groves and the Los Alamos Laboratory.

[fol. 1322] Q. General Groves of course was——

A. Commanding General.

Q. Commanding General in entire charge of the development of this Project at both Los Alamos, or, rather, the Project that is denominated as the Manhattan Engineer Project, is that right?

A. Manhattan Engineer District.

Q. And what actually was the objective of that Project?

A. To develop and make an atomic bomb.

Q. In other words, research and the——

A. Research and development.

Q. —development and manufacture?

A. Manufacture and delivery.

Q. Just to supplement your background, after you left the Army, it is the fact, is it not, that from January 1, 1947 to September 1948 you were associated with the Atomic Energy Commission?

A. What were those dates?

Q. January 1, 1947 to September 1948?

A. Well, I am still employed by the Commission, but——

Q. What was your job?

A. My job during that period was technical assistant to the general manager.

Q. What was your job after that, until January of 1950?

A. I was assigned as special assistant to the director of production, handling special tasks for the director of [fol. 1323] production.

Q. Of the Atomic Energy Commission?

A. For the Atomic Energy Commission, yes, sir.

Q. And from January 1950 until November 1950, did you continue to be associated with the Atomic Energy Commission?

A. Yes. I went from the Production Division to the Division of Biology and Medicine and held the job there as executive officer to the Division of Biology and Medicine.

Q. What do you do today?

A. I am again special assistant to the Director of Production, handling special assignments.

Q. Let us now go back to April 1944; from that date until January of 1947, as liaison officer for General Groves, did you have an occasion to visit the Los Alamos Project?

A. Yes, I went out, I believe, on the average of about once a month.

Q. Was it known at that time as "Los Alamos", or did it have some other name?

A. No, we identified it as "Project Y".

Q. When you made these visits, how long would you stay? How long would your work require that you stay there?

A. Dependent on the amount of work I had at the time. It ranged from one day to six days, seldom longer than a week.

[fol. 1324] Q. In the performance of your work as liaison officer for General Groves, did you have anything to do with production problems at Project Y?

A. I did. My assignment as liaison officer was to keep General Groves informed of the technical progress of the research, development and production phases of the atomic bomb Project at Los Alamos. Then beyond that, I could go on and say that probably my—most of my work was taken up, since General Groves left me pretty much alone, and I reported to him when it was necessary, making sure

that the Los Alamos Project had, oh, ample opportunity to get their job done, by providing them with avenues of approach to other Government agencies, the defense establishment, other scientific laboratories.

Q. You acted as a liaison with other Government agencies in connection with problems——

A. Yes.

Q. —procedures?

A. Yes.

Q. In other words, you had to straighten out all of the inter-related bugs; is that what it comes to?

A. That was about the job, right.

Q. That was your job. How long did you continue that work?

A. I continued the job, working closely with the Los Alamos Project, right up to the end of the war. Toward the end of the war, as you know, we had a New Mexico test. I assisted in the planning of that test. Then after the [fol. 1325] test, I was General Groves' operation officer, if you want to call it that, for the combat operation in the Mariannas.

Q. To your knowledge, was the work and progress and everything associated with it of a classified character, from the standpoint of security?

A. Oh, the entire Manhattan Project was classified. Los Alamos was a little more classified than anything else.

Q. Do you recall while you were doing that work sometime in August of 1945, July or August, around that time, in the summer, there was a first test explosion or first explosion of an atomic bomb in that vicinity?

A. Yes.

Q. Tell us what knowledge you had of the preliminaries leading up to that explosion and the related facts in connection with the explosion?

A. Well, we started planning for it many months in advance of one of these things.

Q. Did you take part in those plans?

A. I took part in all of the planning. I visited Los Alamos many times, in assisting them in their planning, assisting them in their procurement of supplies and equipment and personnel. Because of my assignment in General

Groves' office, I did not go to the test; I stayed in Washington, but I was there in Washington when the operation [fol. 1326] took place in July, July 16, I think it was, 1945.

Q. Was everything associated with the preparation and the actual test classified?

A. Highly Classified.

Q. You say "Highly Classified"; "Highly Classified" is a secret?

A. Top secret.

Q. Is a Government secret?

A. Or top secret.

Q. During the year 1945, did you have occasion to see the actual atomic bomb which was being developed and constructed at the Los Alamos or the Y Project?

A. Many times.

Q. What was the occasion, or what were the occasions for your seeing these things?

A. In my connection with my technical assignment with General Groves and the laboratory, I had to keep informed on the work and progress, be able to do the job properly.

Q. I take it, you likewise were informed of some of the experiments, many of the experiments incidental to the development of the atomic bomb?

A. I was.

Q. These, too, I take it, were the subject of reports, communications from you to General Groves, were they not?

A. They were.

Q. There has been testimony in this trial by a witness, David Greenglass, regarding the structure of the atomic bomb, and he likewise has identified a cross-section sketch of the bomb, which is Government's Exhibit 8 in evidence. [fol. 1327] I would like you to listen, Mr. Derry, while the court reporter reads the witness Greenglass' testimony as he gave it here, relating to the bomb, a description of the bomb connected with this Government's Exhibit 8, and then I shall ask you some questions.

Mr. E. H. Bloch: If the Court please, I object to this method of procedure. I think Mr. Saypol has stated that it is his purpose to have this witness corroborate Greenglass' testimony on this particular point, and I suggest very strongly that before this witness is given Greenglass'

testimony, he be asked to describe a cross-section of the bomb, and then, I say, it is for the jury to decide. I have no objection to the reading of the testimony right after this witness——

The Court: The jury will have to decide anyway, but they are entitled, on a subject as technical as this and a subject on which there is so little knowledge outside of the technical field, to have the help of an expert.

Mr. E. H. Bloch: Correct. I am not disputing that at all, your Honor. What I am saying is that I think it is unfair; I think it is leading and suggestive at this time to say to this witness, "Now, you read this testimony and tell us about this and that."

My suggestion is—and I think it the fair way of pro-[fol. 1327-A] ceeding—is to have the witness testify to what he considers to be, or describe a cross-section of the atomic bomb to the jury, and then if the jury desires, or if the Court instructs have Greenglass' testimony read right after he describes, or even during the course of his testimony.

The Court: It is overruled.

Mr. E. H. Bloch: I respectfully except.

[fol. 1328] By Mr. Saypol:

Q. Will you listen while Mr. Slavin, the reporter, reads the description.

(Previous testimony given by Mr. David Greenglass read by the Court Reporter.)

The Court: Doesn't that cover it?

Mr. Saypol: All right, Mr. Slavin, thank you.

Q. Mr. Derry, does the description as Mr.——

The Court: May I at this point say to the members of the press that I do hope that they will exercise the same good judgment that they exercised in publishing the information as it came from the lips of Mr. Greenglass.

Q. Mr. Derry, does the description as read by Mr. Slavin in conjunction with the sketch before you, Government's Exhibit 8, relate to the atomic weapon which was in the course of development in 1945?

Mr. A. Bloch: I object to the question on the ground that it is virtually a question of characterizing by one witness of another witness's testimony, and upon the further ground that this witness has failed to qualify as an expert on the ingredients and their functions contained in the statement just read to him.

The Court: Overruled.

Mr. A. Bloch: Exception.

The Witness: Would you read the question again, give [fol. 1329] me the question again?

(Question read.)

A. It does.

The Court: I believe you told us that you knew each and and every detail of the construction of that weapon, that was your job?

The Witness: It was my job to know what went into the parts of it.

The Court: And you understood the entire subject matter, didn't you?

The Witness: Yes, sir, I did. It was my task that General Groves gave to me.

Q. And you still do understand it?

A. I still do.

Q. Does the knowledge as disclosed in the material read by Mr. Slavin, in conjunction with the sketch before you, Government's Exhibit 8, demonstrate substantially and with substantial accuracy the principle involved in the operation of the 1945 atomic bomb?

Mr. A. Bloch: I respectfully urge the same objection made to the original question put to the witness.

The Court: Overruled.

A. It does.

Q. From that testimony and from that exhibit you perceive clearly the structure of the weapon as it actually was?

A. I didn't get that question.

[fol. 1330] Q. That is, from the testimony as it has been read to you and from the sketch, Exhibit 8, can you perceive——

The Court: Can an expert.

Q. Can you——

The Court: I would say, can an expert in that particular field perceive.

Q. Can a scientist, and can you, perceive what the actual construction of the bomb was?

A. You can.

Q. To a substantial degree?

A. You can.

Q. Was this information classified at the time?

A. It was classified top secret.

Q. Is it still classified?

A. Yes, sir.

Q. Does this information relate to the national defense of the United States of America?

A. It certainly does.

Mr. A. Bloch: I object to it upon the ground that it is calling for a conclusion of the witness.

The Court: Well, it is something which the jury will have to decide on ultimately. That is his opinion, but the jury will have to decide on that question. It is a question that has to be given to him.

Mr. Saypol: I had thought at some stage of this pro-
[fol. 1331] ceeding, perhaps more than once, there was some concession that the atomic bomb was related to the national defense.

Mr. E. H. Bloch: I do not think there is any question about that, and I did not want to get up and object to the question upon the ground that it was superfluous.

The Court: In other words, you really withdraw the objection?

Mr. E. H. Bloch: I do.

The Court: That it states a conclusion?

Mr. A. Bloch: It is such an offensive thing to me to hear an improper question, that is why I got up.

The Court: All right. Now, that you have heard it, you withdraw the objection?

Mr. A. Bloch: Certainly.

The Court: Go ahead.

Q. Does the information that has been read to you, together with the sketch concern a type of atomic bomb which was actually used by the United States of America?

A. It does. It is the bomb we dropped at Nagasaki, similar to it.

Q. Do you know whether at the time in question, 1945, any foreign government had the knowledge which our scientists possessed regarding the development and structure of that [fol. 1332] weapon, outside of the British and Canadians?

A. No, I don't know, outside of the British and Canadians.

Q. No nation possessed it?

Mr. Bloch: So far as this witness knows.

The Court: So far as you know.

Mr. Saypol: Oh, indeed.

A. Yes.

Mr. Saypol: I asked the witness a question on the basis that he was the liaison to the man directly and officially charged with the development and use of the weapon.

Q. Am I correct in that, Mr. Derry?

A. That is right, sir.

Mr. Saypol: That is all. You may cross-examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. That exhibit that you hold in your hand or that you held in your hand—I think it has been marked Government's Exhibit 8—was there in the files of the United States Government, whether at the Los Alamos project or in Washington, D.C., a cross-section of the atomic bomb, substantially similar to the cross-section reflected in Government's Exhibit 8?

A. We had many drawings.

[fol. 1333] Q. None whatsoever?

A. We had many.

The Court: He said "many".

Mr. E. H. Bloch: Oh, I am sorry.

Q. Many. Did you have any which were substantially the same as Government's Exhibit 8?

Mr. Saypol: May I know from counsel whether he means that the Government agencies had any sketches prepared by Greenglass?

Mr. Bloch: No, anybody, anybody.

Mr. Saypol: Well, I think that must be obvious.

A. You mean in the Manhattan District or Los Alamos?

The Court: Let him answer it.

Q. Either at Los Alamos or any other place where the Manhattan District was involved.

A. My connection was at Los Alamos with respect to that.

Q. All right, then let me limit my question then: Was there any sketch or blueprint or any other documentary matter in the form of a plan or sketch or a blueprint which was substantially similar to the sketch reflected in Government's Exhibit 8?

A. At Los Alamos, yes.

Q. Pardon me?

A. At Los Alamos, yes.

Q. There was?

A. Yes.

Q. And when for the first time would you say such a sketch was on file, was made and put on file in the regular course of business at the Los Alamos project?

[fol. 1334] A. Well, it is hard to say exactly when, for this thing was in the developmental stage from the time we initiated the project until it was done. There are various and different kinds of developmental aspects of the weapon. It was constantly changing. When it was specifically put in the file, I have no way of knowing.

Q. All right. Would you say that Government's Exhibit 8 reflects a sketch of the atomic bomb when it had already been perfected?

A. Substantially.

Q. Would that refresh your recollection as to when such a sketch was made, used and filed at Los Alamos?

A. No, because, let me be clear: I was not assigned to the Los Alamos laboratory. I wasn't at the project except in a technical liaison capacity between General Groves' offices and the Los Alamos Laboratory. My dealings had nothing to do with the preparation of material and sketches,

placement of files, arrangement of material at the laboratory.

Q. I understand that, but in your important task as a liaison between General Groves and the project itself, is it not a fact that many of these sketches and many of the plans and documents in the developing stages of the atomic bomb [fol. 1335] construction and development came into your hands?

A. I saw them in the course of my business.

Q. You see, what I am trying to find out, Mr. Derry, is whether or not there ever came into your hands and whether you looked at any sketch which was substantially similar to the sketch reflected in Government's Exhibit 8.

A. Yes, I have seen them. I saw them at Los Alamos.

Q. What I am trying to do is fix the time, if you can refresh your recollection, as to when you first saw a sketch which was similar to the sketch reflected in Government's Exhibit 8.

A. Well, when I first went out there in April 1944 I was given information then about what developments were in work at that time on the weapon. Then as I kept going back, it kept constantly changing. So I would say from April 1944 through my entire association with the Los Alamos laboratory at one stage or the other I saw the work in progress; from April 1944.

Q. I understand that, but what I would like to ask you now is, does Government's Exhibit 8 reflect a cross-section of the bomb after there had been many, many months of development and experimentation?

A. The answer is yes to that.

Q. Would that refresh your recollection as to just about [fol. 1336] when a sketch similar to Government's Exhibit 8 was made and used and filed in the Los Alamos project?

A. I specifically can't say exactly when because it was in constant change, a state of flux.

Q. Well, maybe this might refresh your recollection: could such a sketch have been in the Government's files prior to January 1945?

A. Prior to January 1945? I would say yes.

Q. Just one further question, Mr. Derry: If you were asked to give a written description elucidating this sketch in Government's Exhibit 8 so that any scientist or any

person of intelligence interested might understand what you were talking about and trying to describe, could you compress a description of that within 12 pages?

A. You could give substantially the principle involved.

Q. That would not, of course, be a complete description, would it?

A. You would have the principle. That is what is intended here.

Q. Would you say from what Mr. Slavin read to you from the testimony of Mr. Greenglass where Mr. Greenglass described the various things on that sketch, including the initials, that that would represent a complete description of the cross-section of the atomic bomb and the function of the atomic bomb and how it works and the principles under [fol. 1337] which it works?

The Court: I don't think it was offered on the theory that it represented a complete—is that true, or am I mistaken?

Mr. Saypol: Indeed not. As I said when I had the witness Koski on the stand, the import of this whole thing is that there was enough supplied to act upon——

The Court: That was my understanding of the question.

Mr. Saypol: You remember, your Honor, I used the colloquialism, tip off. That is exactly——

The Court: I don't think it was offered as a complete or as a detailed description.

Mr. E. H. Bloch: That is right.

The Court: But just as the witness has testified it is a description of a principle upon which it works.

Mr. E. H. Bloch: Now what I am trying to do your Honor, is to use this question for a few follow-up questions.

The Court: I thought you said before you had one more question.

Mr. E. H. Bloch: I didn't know what the answer was going to be. I thought the answer might have been that this was a complete description, and that would have been [fol. 1338] my last question. Now that the answer is that it is not complete I have further questions.

By Mr. E. H. Bloch:

Q. This is not a complete description?

A. This substantially gives the principle involved.

Q. Would you say as a scientist, a graduate engineer who has received college courses and obtained a degree in engineering, and had the experience that you have detailed to us here, that a machinist without any degree in engineering or any scientist would be able to describe accurately the functions of the atom bomb and its component parts——

The Court: Objection sustained.

Q. Both in relation——

Mr. E. H. Bloch: May I finish it?

The Court: Yes.

Q. Both in relation to their independent functions and to their inter-related functions?

The Court: Objection sustained.

Mr. Saypol: I would like the record to show that it is the jury who will judge that from Greenglass's testimony; not this witness.

The Court: Yes, we have had a bit of summation right now.

So we will take that out of the final summation.

[fol. 1339] Mr. E. H. Bloch: It wasn't intended as a summation, your Honor. That is all.

The Court: Anything further?

Mr. E. H. Bloch: No.

(No further cross-examination.)

The Court: We will take our recess at this point. We will recess until 2.15.

Mr. Saypol: Will your Honor order this resealed on the record?

(Referring to Government's Exhibit 8 and stenographic notes.)

The Court: Yes.

(Recess to 2.15 p. m.)

[fol. 1340] Afternoon session.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Let's see whether we can now approximate how much longer the Government's case will take, so the defense will be prepared, and they can start their case.

Mr. Cohn: I think, your Honor, that at present indication, we ought to be able to rest by lunch time tomorrow.

The Court: All right.

Mr. Cohn: The defense can probably plan to go on tomorrow afternoon.

The Court: I think the defense can probably take that as an indication.

Mr. A. Bloch: That takes me by surprise. Only this morning I understood that Mr. Saypol told you that it would probably take all day Thursday.

The Court: I know, it is true he did say that. The surprise between this morning and now wouldn't make any difference. You couldn't have done anything between this morning anyway; you were in court; but you were told when we adjourned on Friday to be prepared along the middle of the week for the defense.

Mr. A. Bloch: I did not so understand it, your Honor. I understood that the District Attorney told you that it would take him four or five days in which to complete his [fol. 1341] case. Now, today is really the first day of those four or five days.

The Court: Well, that may be.

Mr. A. Bloch: I really wanted Saturday, at least.

The Court: You had a long week end, and I am sure you didn't waste it; I am sure you did some work on your defense; am I right, Mr. Bloch?

Mr. A. Bloch: We were very busy all of the three days, your Honor, but I never anticipated being called upon to put anybody on, on behalf of the defense, this week.

The Court: Well, I am afraid you are going to have to do it if they finish their case.

Mr. E. H. Bloch: Well, may I ask the Court this favor, then: Of course, we did work all week end and we tried to gear our work to adjust it to when we might need certain things. Now, if the prosecution concludes their case by

tomorrow afternoon, may we request of your Honor that we start our defense the following morning?

The Court: No, no, we have had a lot of adjournments and I contemplate now giving the jury all of Friday off, it is Good Friday; and I believe that if they finish tomorrow—[fol. 1342] and, of course, we are merely anticipating something that may not happen—if they finish tomorrow at the luncheon recess, you are to be prepared to go right on, and I believe that you ought to be prepared to go right on no matter what time they finish, except, of course, if it is about four o'clock in the afternoon or something like that. Then we will recess until the next morning, but if their is a reasonable time left during the course of the afternoon, you should be prepared to start.

Mr. E. H. Bloch: I then suggest to your Honor that in light of our conversation at the bench about when you would want the proposed requests to charge——

The Court: It still stands for next Monday.

Mr. E. H. Bloch: Oh, it still stands for next Monday.

The Court: That is right.

Mr. E. H. Bloch: That will take some load off our shoulders.

The Court: No, I wouldn't need it before.

All right, proceed.

(Government's Exhibit 18-K marked for identification.)

Mr. Cohn: Now, your Honor, this is another document from Sobell's Selective Service file. I showed it to counsel at the luncheon recess and they have made the same con-[fol. 1343] cession or stipulation, whatever you would like to call it, that the signature of the registrant here is the signature of the defendant Morton Sobell.

The Court: What is that exhibit?

Mr. Cohn: That is 18-K for identification at this time.

The Clerk: Manuel Giner de Rios.

The Court: Have you got an interpreter here?

Mr. Cohn: Yes, your Honor, I was just going to approach that point. Mr. Rios speaks a little bit of English, but not enough.

Mr. Wiesner, will you come forward, please?

(The Interpreter, Eugene Wiesner, stepped forward.)

Mr. Cohn: If there is any question of the qualifications of the interpreter, your Honor, I would state for the record that he has been an official Spanish interpreter for the Immigration and Naturalization Service for the past eight years and has had considerable experience testifying in this court.

Mr. Kuntz: We don't raise the question.

The Court: All right.

(Eugene Wiesner sworn as interpreter.)

[fol. 1344] Manuel Giner de Los Rios, called as a witness on behalf of the Government, having been duly sworn through the Interpreter, testified through the Interpreter as follows:

The Court: Would you speak up, please, Mr. Interpreter?

The Interpreter: I will, sir.

Direct examination.

By Mr. Cohn:

Q. Now, Mr. Rios, will you just sit back and try to keep your voice up as you testify.

A. Yes.

Q. Mr. Rios, do you reside in Mexico City?

A. Yes, sir.

Q. And what is your business?

A. I am an interior decorator.

Q. Will you tell us in just a little bit more detail exactly what that is?

A. I have my own interior decorator's establishment, and there are various interior decorators' shops that work for me.

Q. And where is your business located?

A. At 123 Calle Articulos, No. 37, office No. 802, Mexico City.

Q. Will you tell us now where in Mexico City you reside?

A. No. 153 Calle Octava de Cordoba.

Q. Cordoba?

A. Mexico City.

Q. How long have you lived at that address?

A. Since December 1940.

[fol. 1345] Q. December of 1940. Now would you tell us what kind of a place that is? Is it an apartment house, a boarding house or what?

A. It is an apartment house.

Q. About how many apartments are there in that house?

A. Six.

Q. And do these apartments have numbers?

A. Yes.

Q. Will you tell us the number of your apartment?

A. Apartment 5.

Q. Now in July of 1950 were you residing at this address on Cordoba street in apartment 5?

A. Yes.

Q. Did there come a time at the beginning of July when you saw an American at that address?

A. Yes, sir.

Q. Do you see that man here in court?

Q. Yes, sir, I see him.

(Defendant Sobell stands.)

Mr. Cohn: May the record indicate that the defendant Sobell has been identified by the witness.

Q. Will you tell us, Mr. Rios, of the first occasion on which you saw the defendant Sobell?

A. I saw him on the staircase of the apartment.

Q. Under what circumstances?

A. The gentleman needed a gas tank for the kitchen in his apartment.

[fol. 1346] Q. A gas tank?

A. Yes, cooking gas.

Q. Do you know whether or not Sobell had rented an apartment at this address on Cordoba?

A. Yes, I know he did.

Q. When, in relation—on what day in relation to the first time that you saw him?

A. I believe it was on the same day when I met him on the stairs.

Q. Now, Mr.Rios, you speak a little English, do you not?

A. Yes, a little.

Q. And did you converse with Sobell in English on that day about this tank of gas?

A. Yes, because the woman caretaker of the house didn't understand any English and I found out that he needed a tank of gas for cooking.

Q. And did you relay that message to the caretaker?

A. Yes.

[fol. 1347] Q. In Spanish? The question was relayed in Spanish?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. Now, what was the next occasion on which you saw Sobell?

A. Possibly the next day or two days later I saw him leaving by the same staircase.

Q. Did you know his name at this time?

A. No, sir.

Q. On what occasion did you learn his name?

A. When I invited him to my party in my house.

Q. About how long after Sobell had moved in was he invited by you to this gathering at your apartment?

A. About five or six days after.

Q. Who was present at this party? I won't want the names. Was it family, friends or what?

A. It was a party for the family and friends in honor of the saint's day, celebrating the name of that friend of ours, a woman friend.

Q. Did you continue to see Sobell after that from time to time around the house?

A. I saw him and members of his family at times going to the terrace to take sunshine, a sun bath.

Q. I would now direct your attention to a particular conversation and ask you whether or not there was an occasion when Sobell came to you and said he wanted to talk to you about something.

A. It was a few days after we had dinner with them be-

[fol. 1348] cause they invited us to their house.

Q. In other words, you had dinner with them at their home, at their apartment?

A. Yes.

Q. What was the number of their apartment?

A. Apartment 4.

Q. They had apartment 4 and you had apartment 5, is that right?

A. Yes.

Q. Now, did I understand you to say that this particular conversation in which Sobell came to you and said he wanted to talk to you about something took place a few days after you had visited Sobell in his apartment?

A. Yes, exactly.

Q. Now, would you tell the Court and jury what he said and what you said on that occasion?

A. He asked me if I wanted to be a friend of his.

Q. "He asked me if I wanted to be a friend of his"?

A. If I could be a friend of his and I told him yes, I would, without knowing, of course, what he was looking for. He was a little nervous, a little worried.

Mr. Kuntz: I move to strike that out, if your Honor please.

The Court: No, I will let it stand.

A. And he asked me how one could leave Mexico. And I told him that there would be no trouble if one has his [fol. 1349] papers in good order. He asked me if there would be any other way and I told him no, I didn't know of any other way.

Q. Did he tell you where he wanted to go?

A. No, he didn't mention any place in particular.

Q. Did he mention any place at all? I am not referring only to a city or town; I want to know if he mentioned any location.

Mr. Kuntz: Wait a second. I submit, if your Honor please, this witness has answered the question.

The Court: Overruled.

A. He didn't specify any place or any country outside of Mexico.

Q. Was there anything more said in the course of that conversation?

A. He told me he was worried because he said he was afraid to return to the Army, the U. S. Army since he has already seen a war, has experienced a war.

Q. Did he make any statement as to why he wanted to leave Mexico?

A. Only because he was afraid.

Q. Did he say specifically what he was afraid of?

Mr. Kuntz: If your Honor please, that has been answered now.

The Court: Overruled.

Mr. Kuntz: Exception.

[fol. 1350] A. He was afraid that they were looking for him so that he would have to go to the Army.

Q. Did he say who he thought was looking for him?

A. The military police.

Q. What did you say?

A. I told him I cannot do anything to help him and that I can't get any way for him to leave Mexico.

Q. After this conversation did you see Sobell on any other occasion?

A. Yes, on various occasions. On one occasion he came to my house and asked for a hammer to break open a coconut.

Q. Now, did you ever have any conversation with him in the course of which the seaport of Vera Cruz was mentioned?

A. He told me a few days later he told me he would like to go to the Port of Vera Cruz.

Q. What was that conversation? Tell us what he said and what you said.

A. He asked me how one can get to Vera Cruz.

Q. What did you tell him?

A. And I told him the directions; I explained to him the directions, how to go to the bus station, how to get to the bus station to go to Vera Cruz.

Q. Did there come a time when Sobell left Mexico City to go to Vera Cruz?

A. Yes.

Q. About when was this?

A. Sometime around the 20th or 22nd of July 1950.

[fol. 1351] Q. About how long was he gone About how long was Sobell gone from Mexico City?

A. For about 15 days.

By the Court:

Q. Did he make the trip himself and leave his family behind?

A. Yes, he made it alone.

By Mr. Cohn:

Q. Now, during the 15-day period that he was absent from Mexico City did you receive any communication from him?

A. I received two letters.

Q. When did the first come?

A. About eight days after his departure.

Q. What was the postmark on the envelope?

A. Vera Cruz.

Q. To whom was the letter addressed?

A. The envelope was addressed to my name, Manuel Giner de Los Rios.

Q. Did you open the letter, did you open the envelope?

A. Yes, I opened it, because it was addressed to me and I have friends in Vera Cruz.

Q. What was inside?

A. A letter which started out "Dear Helen", which read, "Dear Helen".

Q. I think you told us your first name is Manuel; is that right?

A. Yes.

[fol. 1352] Q. Did you know Mrs. Sobell's first name?

Mr. Kuntz: We will concede that it is Helen.

Mr. Cohn: All right, your Honor.

The Court: All right.

Q. After you opened this envelope addressed to you and found the letter beginning "Dear Helen", what did you do?

A. I went to see Mrs. Sobell and I turned it over to her.

Q. Was there any conversation?

A. I asked her how come that I received a letter which is not for me?

Mr. Kuntz: Wait a second. I understood the question to be "Did you have any conversation?" I thought there

would be a yes or no answer, but since the conversation is attempted to be given, I must object to any conversation between this witness and Helen Sobell.

Mr. Cohn: I am inclined to think the objection is well taken, your Honor.

The Court: You are withdrawing that question?

Mr. Cohn: Yes.

The Interpreter: Sometimes a question may be a little longer and I want to be very exact; can I use a slip of paper for an occasional word to put down, to facilitate and to be absolutely right?

The Court: Yes.

[fol. 1353] Q. I will ask this question: Did you have a conversation with Mrs. Sobell about this letter, addressed to her, which came in an envelope to you——

Mr. Phillips: Just yes or no.

Q. —just yes or no?

Mr. Cohn: I can get it, Mr. Phillips.

A. Yes.

Q. After that, did you receive any more letters from Sobell?

A. Yes, one more.

Q. About when?

A. About six or seven days after the first one came.

Q. Did you notice the postmark on the envelope?

A. That time it came from Tampico, Mexico.

Q. That is the second seaport in Mexico; is that correct?

A. Yes.

Q. Vera Cruz is the first, the leading one?

A. Yes.

Q. Now, to whom was the envelope addressed?

A. Again to me.

Q. Did you open the envelope?

A. Yes, because I have friends and acquaintances in Tampico.

Q. What was the salutation on the letter this time?

A. The same as before, "Dear Helen".

Q. Did you pay another visit to Mrs. Sobell?

A. Yes.

[fol. 1354] Q. Am I correct in stating that you had some discussion with her about the repetition of this practice?

A. Yes, sir.

Q. As the result of that conversation or after that conversation no further letters intended for Mrs. Sobell were addressed to you; is that correct?

A. Yes, I didn't get any more.

Q. Now, I think you told us Sobell was away for about 15 days; is that right?

A. Yes, approximately.

Q. And he returned to Mexico City thereafter?

A. I know that he returned, but I did not see him.

Q. After his return; is that right?

A. Yes.

Q. Do you know approximately what date Sobell was deported to the United States by the authorities?

Mr. Kuntz: I object to that, if your Honor please. There is no proof here of any deportation, no proof of any action by the Mexican authorities. To ask a citizen a question like that, I think, is highly improper.

The Court: To ask a citizen?

Mr. Kuntz: A civilian, a person not connected with any Government.

The Court: You mean, to ask anybody?

Mr. Kuntz: To ask anybody.

Mr. Cohn: Of course, your Honor, I am asking a ques-[fol. 1355] tion. I think we have other proof coming.

The Court: You have other proof coming of deportation?

Mr. Cohn: Yes, your Honor.

Mr. Phillips: One moment. I object to the question at this time. If he has other proof, let him produce the proof.

The Court: Oh, Mr. Phillips, let us not go through that again. Do you want two or three witnesses testifying at the same time?

Mr. Phillips: I do not concede the fact.

The Court: Of course you don't; you don't concede anything. They are trying to prove it and they can't prove it all at one time.

Mr. Cohn: Your Honor, I am going to withdraw the last question.

The Court: All right.
Mr. Cohn: I have no further questions.
Mr. Phillips: No questions.
The Court: Tell him to step down.

(Witness excused.)

[fol. 1356] The Clerk: Minerva Bravo Espinosa.

Minerva Bravo Espinosa, called as a witness on behalf of the Government, being first duly sworn through the interpreter, testified through the interpreter, as follows:

Direct examination.

By Mr. Cohn:

Q. Now, would you tell us where you reside, Miss Bravo?
A. I live in Vera Cruz, Mexico.
Q. At what street address in Vera Cruz?
A. At No. 41 Calle Allienda.
Q. How long have you resided at that address?
A. For about four or five years.
Q. What is your occupation?
A. I am an employee.
Q. An employee; is that correct?
A. Yes.
Q. Of what concern?
A. In an optical store.
Q. Where is this optical store located?
A. At No. 139 Calle Cinco de Mayo, in Vera Cruz.
[fol. 1357] Q. That is a street address in Vera Cruz?
A. That is a street address in Vera Cruz.
Q. What is the name of the concern, the optical concern which employs you?
A. It is called Optico Palacios. Palacios is the name of the owner of this shop or store.
Q. Palacios is the owner of the shop, is that correct?
A. That is right.
Q. For how long a period of time have you been employed at Optico Palacios?
A. For about five years.

Q. What are your duties there?

A. I attend to the clients who come to make purchases and also work in the office, do work in the office.

Q. Am I correct in assuming that at this optical shop the business consists of selling—making and selling glasses to customers?

A. Yes.

Mr. Kuntz: Just for the purpose of saving time, if Mr. Cohn wants me to concede that we had a pair of glasses made in that store, we will concede that.

Mr. Cohn: Oh, I think there is a little more, your Honor.

Mr. Kuntz: All right.

Q. Now do you recall the 23rd day of July 1950?

A. Yes.

Q. On that day did an American come to your store?

[fol. 1358] A. It was on the 26th.

Q. 26th. I stand corrected. The 26th of July, is that correct?

A. Yes.

Q. Did an American come to your store on that day, on the 26th of July?

A. Yes.

Q. What was his name?

A. Mr. M. Sand.

Q. Do you see this Mr. Sand here in court today?

A. Yes.

Q. Where is he seated?

A. The third gentleman from this side (indicating.)

(The defendant Sobell stands.)

Mr. Cohn: May the record indicate that the witness has identified the defendant Sobell as M. Sand.

Q. Now when this Mr. Sand came to your shop on that day did he place an order for a pair of glasses?

A. Yes, a pair of glasses.

Q. Did he fill out any papers in connection with his purchase?

A. Yes.

(Marked Government's Exhibit 21 for identification.)

Q. What kind of a paper did he fill out?

A. It was a card.

Q. What kind of a card, tell us something about it.

A. It was a card which the purchasers make out to specify what they buy.

Q. Were you present when this Mr. Sand filled out that [fol. 1359] card?

Mr. Kuntz: We will concede that we filled out the card and used the name of M. Sand and bought a pair of glasses there. If that is what Mr. Cohn wants I will be very happy to give it to him.

Mr. Cohn: Well, that is fine, your Honor. The concession now is that the pair of glasses was purchased under the name of M. Sand, that the man using this alias was defendant Sobell. Is that correct?

Mr. Kuntz: Mr. Cohn, if you had asked me that before I would have been glad to give it to you.

Mr. Cohn: Your Honor, I find that after the proof comes in sometimes it is regarded as good tactics to get up and say it is conceded and that it would have been conceded before. I bow to such maneuvers. In former days——

Mr. E. H. Bloch: I object to that. I hope you are not——

The Court: All right, disregard that statement, ladies and gentlemen. Very well.

Mr. Cohn: Your Honor, I cannot very well go to defense counsel and tell them all the proof we have and find out what they will concede and what they won't. If we possibly can do it, as I think we have to a very great extent in this trial, to save time and money, we have done [fol. 1360] that.

The Court: All right.

Mr. Kuntz: I say in each instance where the prosecution came to us, either of defense counsel, and asked for a concession as to a bank record, a concession as to Morton Sobell's signature, and so on, we have complied in each case. We have never turned them down.

The Court: No, there have been occasions where you have not but I will say in the greater number of cases you have. There have been instances where you haven't.

Mr. Cohn: And specifically the concession that Mr. Kuntz

offered me a few minutes ago was that a pair of glasses had been purchased by the defendant Sobell.

The Court: Let us have no further argument about it. I see no necessity for this prolonged discussion.

Now have you got your concession on the record?

Mr. Cohn: Very well, your Honor. We would like this now in evidence.

The Court: Very well.

Mr. Cohn: Would you like to look at it (handing to Mr. Kuntz)?

The Court: What is that, please?

[fol. 1361] Mr. Cohn: This is the card the witness has testified the defendant filled out in purchasing the pair of glasses.

Mr. Kuntz: No objection.

Mr. Cohn: May it be received in evidence, your Honor.

(Marked Government's Exhibit 21.)

Mr. Cohn: May I pass that to the jury, your Honor? I have no further questions of the witness, your Honor.

The Court: Any cross?

Mr. Kuntz: No cross, your Honor.

The Court: Witness excused.

Mr. Kuntz: May I make a suggestion so that I won't be interrupting. If Mr. Cohn will tell me privately what he wants to prove, maybe I can concede it.

Mr. Cohn: I think there is a chance that Mr. Kuntz will concede it, but the testimony of this witness will consume but one minute, and I think since the man is here we can go ahead, if that is agreeable.

The Court: Yes. Of course, we are anxious to let some of these people get back. They seem to be pretty well represented.

Mr. Cohn: Yes, I think so. I should think we shouldn't let them return without testifying.

[fol. 1362] JOSE BROCCADO VENDRELL, called as a witness on behalf of the Government, being first duly sworn, testified through the Interpreter as follows:

Direct examination.

By Mr. Cohn:

Q. Mr. Brocaddo, are you one of the administrators of the——

The Court: His name is Venrell.

Mr. Cohn: With all due deference, your Honor, I think the last name is overlooked in addressing the person.

(Addressing Interpreter) Would you ask the witness what he likes to be called? Mr. What?

The Interpreter: Broccado.

Q. Now, sir, are you one of the administrators of the Grand Hotel Diligencias in Vera Cruz, Mexico?

A. Yes.

Q. Have you produced for us here in court a record kept by that hotel in the regular course of business?

A. Yes, sir.

Q. Does this record consist of a registration card and a hotel bill?

A. Yes. It is a copy of it.

Q. In the name of a man named Morris Sand?

A. Yes, sir.

Mr. Cohn: I am not going to ask you any more questions.

[fol. 1363] Mr. Kuntz: I will make an offer: if you show it to me I will show it to my client and if it is his signature we will concede it.

(Marked Government's Exhibits 22-A for identification and 22-B for identification.)

(Handed to Mr. Kuntz.)

Mr. Kuntz: No objection. We concede the signature. No objection.

Mr. Cohn: May it be received, your Honor? The other is just a bill, Mr. Kuntz. If you don't object to this I am sure you won't object to that.

(Government's Exhibits 22-A and 22-B for identification marked in evidence.)

Mr. Cohn: May I display this to the jury?

The Court: Is that all?

Mr. Cohn: I have no further questions of the witness.

Dora Bautista, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Cohn: I haven't read these exhibits to the jury. I think they are short and speak for themselves. I might merely point out that the bill indicates that Mr. Sand or Mr. Sobell was at the hotel in Vera Cruz until the 30th day of July 1950.

[fol. 1364] Mr. Kuntz: I think I probably can use the same procedure on this witness.

Mr. Cohn: If Mr. Kuntz cares to state what he will concede concerning Tampico.

Mr. Kuntz: I don't know. Suppose you tell me privately what you intend to prove and I will probably concede if it is in accordance with the facts.

Mr. Cohn: I would like, if Mr. Kuntz asks me, to make a statement.

Mr. Kuntz: Look, I think it is only fair to tell me privately what he wants to prove. If it is in accordance with the facts I will concede it.

The Court: Do you want the concession, Mr. Cohn?

Mr. Cohn: I don't know what the concession is going to be.

Mr. Kuntz: I don't know what he wants.

The Court: Tell him what you want.

Mr. Saypol: Tell him.

Mr. Cohn: May I state it on the record?

Mr. Kuntz: Why don't you tell me privately? Then no harm will come if I can't concede it.

Mr. Cohn: Your Honor, I think we will have to continue with our proof. I think if counsel have anything more we ought to do it at the bench, or the best thing would be [fol. 1365] to let us put in our proof and the defense have

its turn. I don't think much is accomplished by offers of this kind.

The Court: Proceed.

Mr. Kuntz: I have no objection to Mr. Cohn stating openly in front of the jury and your Honor what Mr. Saypol asks me to concede.

The Court: I don't want it. Now proceed.

Mr. Cohn: Whenever I think we can accomplish something by a concession I will say so.

(The witness testified through the interpreter.)

Direct examination.

By Mr. Cohn:

Q. Where do you reside, Miss Bautista?

A. It is No. 513 Carranza Oriente, in Tampico, Mexico.

Q. Miss Bautista, are you employed as a clerk at the Tampico Hotel in Tampico?

A. Yes.

Q. Were you so employed on July 30, 1950?

A. Yes.

Q. Do you remember that date?

A. Yes.

Q. Did an American register at the Hotel Tampico on that date?

A. Yes.

Q. What was his name?

A. Marvin Salt.

Q. Now did you have occasion to speak to this man?

A. Yes, he spoke to me.

Q. Did you have any discussion with him about him [fol. 1366] wanting to go to a bank?

Mr. Kuntz: I suggest that the witness should be asked what the conversation and discussion was without any leading.

The Court: You were willing to stipulate to this. Now when he asks a leading question you are objecting. I take it you have no objection to this particular evidence——

Mr. Kuntz: I offer to concede and will concede that Morton Sobell was at this hotel in Tampico.

The Court: All right. Don't tell me. I will rule on the objection. Objection overruled.

A. The answer is yes, the following day.

(Marked Government's Exhibits 23-A and 23-B for identification.)

Q. To what bank are you referring?

A. To the Banco Ganadero, in Tampico.

Q. I show you Government's Exhibits 23-A and 23-B for identification, and ask you if they represent the registration card and the hotel bill of this Marvin Salt (handing to witness)?

A. Yes.

Mr. Cohn: We offer them, your Honor.

Q. Do you see this Marvin Salt here in court?

A. Yes, sir; I see him.

Q. Where is he seated?

[fol. 1367] A. He is the third gentleman from this side (indicating).

Mr. Cohn: May the record indicate that the defendant Sobell is identified now as Marvin Salt, your Honor.

May these be received in evidence.

Mr. Kuntz: No objection.

(Government's Exhibits 23-A and 23-B for identification received in evidence.)

Mr. Cohn: May I display them to the jury, your Honor?

The Court: Yes.

(Exhibits handed to the jury.)

Mr. Cohn: (After conference with Mr. Kuntz and Mr. Phillips) The defendant Sobell, your Honor, I have asked him too, and he has conceded on the record that the handwriting in the name Morris Sand on the registration in Vera Cruz, at the Hotel Diligencias, is his; that the handwriting in the name M. Sand at the optical shop in Vera Cruz is his; and that the handwriting on the registration card here from the Hotel Tampico, in the name of Marvin Salt, is his writing, the writing of the defendant Sobell, and that will save us something.

The Court: Very well.

Are you through with the witness?

Mr. Cohn: I have no further questions of the witness.

[fol. 1368] Mr. Kuntz: No questions.

The Court: She may go back to Mexico.

(Witness excused.)

Mr. Cohn: Is this a good time for a recess, your Honor?

The Court: Are we going a little too fast?

Mr. Cohn: No, it is going along fine. We are delighted.

The Court: All right, we will take a recess at this point.

(Short recess.)

The Clerk: Glenn Dennis.

GLENN DENNIS, called as a witnes on behalf of the Government, having been duly sworn, testified as follows:

Mr. Cohn: Your Honor, the name of this witness is incorrectly spelled on the witness list. It is spelled "Glenn Davis" on the witness list. The correct spelling is "D-e-n-n-i-s," in case defense counsel have trouble finding it.

Direct examination.

By Mr. Cohn:

Q. Mr. Dennis, you are an official of C.M.A., the Mexican Airlines; is that correct?

A. Yes.

Q. What is your exact position?

A. Traffic superintendent, in charge of passengers, mail

[fol. 1369] and cargo.

Q. Is that for all of Mexico?

A. Yes.

Q. Does your plane run flights between Mexico City and Vera Cruz and Tampico and then back again?

A. Yes, sir.

Q. Are you the duly authorized sustodian of various records of your airline in Mexico, fully familiar with the manner in which these records are kept in the regular course of business?

A. Yes.

Mr. Cohn: Will you mark these as two exhibits, A and B, please.

(Marked Government's Exhibits 24-A and 24-B for identification.)

Q. Have you produced, pursuant to subpoena, various records from the files of C.M.A.?

A. Yes, I have.

Q. Do those records concern plane flights, one from Vera Cruz to Tampico, on the 30 of July 1950; and the other, a flight from Tampico to Mexico City, on the 2nd, I believe, of August 1950?

A. That is right; yes, sir.

Q. Have you produced, pursuant to subpoena, manifests of these flights?

A. Yes, sir.

Q. What do these manifests customarily contain?

A. The passenger's name, his weight, his baggage and the distance, leg of travel over which he goes.

Q. How is the weight recorded, pounds or kilos?

[fol. 1370] A. In kilos.

Q. In kilos?

A. Yes, sir.

Q. Now, first of all, I will ask you to examine Government's Exhibit 24-A for identification (handing). Is that a manifest, a passenger list of the passengers on the C.M.A. plane from Vera Cruz to Tampico, July 30, 1950?

A. It is, sir.

Q. Does it contain a list of the passengers who traveled on that plane?

A. Yes, sir.

Q. Do you find a passenger by the name of Morton Sobell?

A. Not by that name, no, sir.

Q. Do you find a passenger by the name of N. Sand?

A. Yes.

Q. Does that record indicate that Mr. N. Sand flew from Vera Cruz to Tampico on July 30, 1950?

A. It does, yes.

Q. And is your copy of his ticket stub attached to the passenger manifest?

A. This is the tickets, the actual tickets (indicating).

Q. The actual tickets that were taken up; is that right?

A. Yes, sir.

Mr. Kuntz: I am afraid to offer any concessions any more. I will offer a concession that Sobell, under the name of Sand flew from—where? From Vera Cruz to Tampico; is that it?

[fol. 1371] Mr. Cohn: Yes, that is it.

Mr. Kuntz: And from Tampico to Mexico City.

Mr. Cohn: Under the same name.

Mr. Kuntz: If you say so.

Mr. Cohn: No, I say it is a different name.

Mr. Kuntz: Show it to me.

Mr. Cohn: All right, fine (showing).

Mr. Kuntz: No question about that.

Mr. Cohn: Fine, your Honor.

Now, may 24-B for identification also be received in evidence then, without objection?

Mr. Kuntz: No objection.

(Government's Exhibits 24-A and 24-B for identification received in evidence.)

Q. Am I correct in stating that we have talked about 24-A, which is the manifest of the flight from Vera Cruz to Tampico? Now, 24-B is the manifest of a flight from Tampico to Mexico City on August 2, 1950?

A. Yes.

Q. And it contains a passenger list; is that correct?

A. Yes.

Q. Its manifest, and have you also produced for us a registration—I am sorry, a control card, I believe it is called?

A. Reservations control card.

Q. Reservations control card; is that right?

[fol. 1372] A. Yes.

Q. And that reservations card indicates that a reservation was made in the name of Morton, M-o-r-t-o-n Solt, S-o-l-t?

A. Yes.

Q. On the flight from Tampico to Mexico City, and the passenger manifest carries the name Morton Solt; is that correct?

A. Yes.

Q. Is that right?

A. That is right.

Mr. Cohn: No further questions of this witness, your Honor.

Mr. Kuntz: No cross.

The Court: Step down.

(Witness excused.)

[fol. 1373] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Cohn: May this be marked for identification.

(Marked Government's Exhibit 25 for identification.)

Mr. Cohn: Your Honor, the Government now offers in evidence a record from the Immigration and Naturalization Service of the Department of Justice of the United States, duly and properly authenticated concerning the circumstances of the departure of Sobell from Mexico to the United States.

I will show that to counsel (handling).

(Mr. Phillips and Mr. Kuntz examine proposed exhibit.)

Mr. Phillips: If your Honor please, that is merely a proof of the existence of a paper but not any proof of the fact, and there are numerous statements in this card——

The Court: Well, will you concede that if a representative of the Department of Naturalization and Immigration were called he would testify that that was an entry which was made in the regular course of business and that it was the regular course of business to make such an entry? The weight to be given to it, and so forth, under the statute, is another matter. That is a matter for the jury.

Mr. Phillips: No, I would have to have the man for the purpose of cross-examination.

[fol. 1374] The Court: There you are on a matter of concessions.

Mr. Phillips: I would have to find out how the record was made. I object to it. It is a self-serving declaration on the part of the Government and in fact contains statements here which we dispute.

The Court: I thought that you were anxious to make concessions.

Mr. Phillips: I beg your Honor's pardon?

The Court: Here is your opportunity to make one. Now they have to call a representative of the Department of Justice.

Mr. Kuntz: That is not the purpose of our objection, if your Honor please. I want both your Honor and the jury to understand the nature of our objection. Here is a record produced from the Immigration Department, which I think we can say is a self-serving declaration—it is an arm of the plaintiff in this action.

The Court: That is not a good objection, I want you to know that.

Mr. Kuntz: No, wait——

The Court: Because most of these—this business of self-serving declarations—most of these entries are self-serving in that they are offered for the purpose of aiding the [fol. 1375] Government's case and doing some damage to the defendants' case. That is the purpose of it.

Mr. Kuntz: But the point I am raising here, if your Honor please, is that contained in that card is a notation not about their records, their own records, which would be kept in the ordinary course of business—that I believe—but in regard to what somebody else did, and that if your Honor will only look at the card——

The Court: Well, I assume that what you are saying is so but I want you again to know that there is a statute enacted by Congress that says, in substance, that the mere fact that there may be hearsay in the document is not enough to exclude it. That is something that may go to the weight of it but if it is an entry which is made in the regular course of business, that it is part of the regular course of business to make such entries, even though it might be hearsay, that the record in and of itself is admissible. The weight to be given to it is another question.

Mr. Kuntz: Well, we cannot see our way clear, because

of the statement in the record, to consent to its admission and we therefore object to it.

The Court: Well——

Mr. Cohn: Your Honor——

[fol. 1376] Mr. Phillips: May I add, if your Honor please, in the paper and the card which are now, I think before you, there are statements not of something done by the person who made the record but of something done by others as to which he could not have personal knowledge.

The Court: It is perfectly all right. You take the ordinary police blotter, that is a record that is made by what somebody else has told the policeman and he makes a record of it in the police blotter.

Mr. Phillips: Even that is only admissible for certain purposes.

The Court: Well, the point is this is only admissible for certain purposes.

Mr. Phillips: This is purported to be a record which they are now submitting to be received in evidence for the contents as a fact.

The Court: Well, so is the police blotter but the point is how much weight would be given to it. That is another question.

Mr. Phillips: But if your Honor please——

The Court: Let us not argue it any further.

Mr. Phillips: I simply want it understood.

The Court: I understand.

Mr. Phillips: This is not a record made by the man who [fol. 1377] has made this record, but he is reporting something that somebody else told him as to which——

The Court: I wish you would take a look at that statute. That is not a sound objection to a record made in the regular course of business. I get your point. It doesn't have to be a record made by the individual himself, on what he himself knows; it can be based on what somebody else told him.

Mr. Phillips: Can we say someone in New York can make a record of something that happened in Europe as to which he knew nothing? Would that be admissible evidence?

The Court: If it was part of the regular course of business of that individual to record those statements or those

actions, and if it was part of his regular course to do so, then it would be admissible. Look at the statute. It is very clear.

Mr. Phillips: If he said that somebody told him perhaps it would be that way, but when he states as a fact——

The Court: Mr. Phillips, that is a matter which you can bring out by stipulation or by cross-examination. It is not based on his own knowledge but that doesn't affect the admissibility of it.

[fol. 1378] Mr. Phillips: In the first place, the witness ought to be here so we can examine him.

The Court: When they brought witnesses from Mexico you said it was silly to bring them.

Mr. Phillips: There are differences in weight, are there not?

The Court: Very well.

Mr. Cohn: If I may be heard on this, your Honor: Under Section 1733, Title 28, when we produce a record properly authenticated, under and by virtue of the law as provided by the statute, we are relieved from the requirement of producing the witness through whom the record is to be introduced. I think the mere presence of a seal and proper authentication makes the record admissible.

The Court: There must be some testimony that the record itself that you are seeking to admit was made in the regular course of business.

Mr. Cohn: I haven't examined that question.

The Court: I think you ought to.

Mr. Cohn: I will do that. In the meantime the card has been authenticated. Of course, it is a record kept in the regular course of business at a somewhat distant place. It means we will have to fly somebody up to show that this is a record kept in the regular course of business that was [fol. 1379] sent down here pursuant to subpoena.

The Court: After recess today get some stipulation on it.

Mr. Cohn: Otherwise we will fly a witness down. I want to make a further point. Your Honor may have noted who signed the original of the card at the end.

The Court: Let me see it.

(Document handed to Court.)

The Court: Of course, this is a copy of it.

Mr. Cohn: Yes. That is just another little thing, but if the point is pressed we will get the witness down.

Mr. Kuntz: I don't raise that question about a witness to prove that the card was a card made in the regular order of business.

Mr. Saypol: May I interrupt?

The Court: Just a moment, Mr. Kuntz is talking.

Mr. Kuntz: I objected and I think Mr. Phillips objected to the receipt of the contents of the card because it would be hearsay. It could not be anything——

The Court: Let me understand you. Then I think I can rule on this question now. That is your only objection, is that right, that it is hearsay? You are not objecting that the card, Government's Exhibit 25 was prepared in the [fol. 1380] regular course of business and it was part of the regular course of business to prepare the card which the Government is offering now? Your objection is to the hearsay portion on the card?

Mr. Kuntz: That is my notion of it. Mr. Phillips feels—he goes further than that——

The Court: He will have to go further because otherwise the statute is specific on the subject. I haven't got it before me.

Mr. Phillips: I insist on having the man who made the card so I can examine him, wherefrom he got the information contained on that card; otherwise we are helpless. They could put anything on the card and we wouldn't be in a position to contradict it. It is very clear.

Mr. Cohn: Mr. Phillips may insist that he wants us to produce the man who wrote the card, but I think the Congress of the United States has otherwise provided, and under the statute I think we can produce somebody who can state that it is a record kept in the regular course of business. It might be the person who made up the card——

The Court: We are in agreement on that. What he wants to do is to get from the lips of the witness that he has no personal knowledge of what is contained on the card. He [fol. 1381] is entitled to get that.

Mr. Cohn: All right. We will have the witness up.

The Court: Maybe you can stipulate that the witness who

prepared the card had no personal knowledge, but all right, that is what you will have to do.

Mr. Saypol: In order to keep the trial moving, we will send a plane down and bring the witness up and prove it as we have had to prove other things.

The Court: 25 for identification is still for identification.

(Marked Government's Exhibits 26-A to 26-I.)

The Court: Are they agreed to that?

Mr. Lane: Yes, your Honor. In the interest of saving time I have consulted with defense counsel and we have agreed to a stipulation, if I may read it to the Court and the jury.

The Court: Yes.

Mr. Lane: All counsel have stipulated with Government counsel as follows:

That Mr. R. B. Walklett, if he were to appear and testify on the witness stand would testify as follows:

That he is a representative of the United States Lines, with which company he has been affiliated since 1919——
[fol. 1382] Mr. Phillips: Wait a minute. I didn't listen to the introduction under which Mr. Lane is making this.

Mr. E. H. Bloch: I am sorry, Mr. Lane and I discussed this and we agreed upon it, and I suppose it is true to say—will you take my word that our stipulation here will not harm you in any way?

Mr. Phillips: I just didn't know what Mr. Lane was telling the jury and under what circumstances. All right.

Mr. Saypol: May I be heard, if the Court please?

The Court: Yes. One at a time.

Mr. Saypol: I want my turn. We have this in-again out-again Finnigan situation with respect to concessions. We have just seen it demonstrated a moment ago here with respect to this last exhibit of Mr. Cohn's.

Now Mr. Lane proceeds to read a stipulation obtained by him in good faith with Mr. Bloch, presumably speaking for counsel, and I don't care to have Mr. Bloch's observation on the record to his fellow counsel representing another defendant, giving them his word that in his judgment that testimony doesn't hurt their client.

The Court: No. I think as a matter of fact, I am con-
[fol. 1383] cerned about that statement by you, Mr. Bloch, for this reason; You must be aware of the law, and the law is that once anybody has been shown to be a member of the conspiracy, if the jury finds that anybody has been a member of the conspiracy, the acts of the others done in futherance of the unlawful objective are binding upon any one of the defendants or co-conspirators. So you must bear that in mind.

Mr. E. H. Bloch: I want to explain to the Court so that there won't be any misinterpretation. I don't blame Mr. Saypol getting up and criticizing me. I don't blame the Court for admonishing me. My formulation was bad. What I meant, and let me state it again, is that I believe that we ought not to object to the introduction of this testimony upon the ground that it is secondary evidence and that the witness is not here, that we may not be able to cross-examine.

Mr. Phillips: Let me say for the record, that we don't know what they are talking about now. We were never approached and never asked.

The Court: Do you want to take it up with them? Look at it?

Mr. Saypol: I think if we talk to counsel and counsel make a statement we ought to be free to proceed on the basis of that statement.

[fol. 1384] The Court: No, I don't think you can proceed. It affects all the defendants.

Mr. Saypol: Excuse me, if your Honor please; I thought your Honor was through. I didn't mean to interrupt you.

The Court: No. I say I believe that the evidence affects all the defendants.

Mr. Saypol: I don't mean that counsel should not be diligent to protect their clients, but at the same time I don't propose to display any lack of diligence on my part when one counsel undertakes to evaluate and characterize testimony, as it affects another defendant, because I want to be heard loudly and forcefully on that.

Mr. E. H. Bloch: I don't know how many times I can apologize——

The Court: No, no, no more. Let us not go on with this.

Mr. Lane: There is no objection.

The Court: All right, all agreed.

Mr. Lane: R. B. Walklett would testify, and that is a stipulation, were he in the witness box, that he is a representative of the United States Lines, with which company he has been affiliated since 1919. He is a passenger representative. He can identify the picture of Anatolis Yakovlev [fol. 1385] as the person who purchased a ticket on October 14, 1946 for passage to France. And he will identify the picture on State Department document, Government's Exhibit 15 in evidence, the picture of Yakovlev.

He will further testify that he is familiar with the books and official records of the United States Lines, and he personally had charge of the particular record pertaining to the sailing of Anatoli Yakovlev on the SS. America on December 27, 1946.

He will further testify that Yakovlev came to the office of the United States Lines in New York City in October 1946 and booked passage for sailing on November 14, 1946, which sailing was postponed because of a pier strike to December 5, 1946.

The sailing was again postponed until December 27, 1946, and that on that day Yakovlev and his family, two children and his wife, sailed for France.

He can produce and identify the following documents which we have introduced in evidence as Government's Exhibits 26-A to I inclusive: They include as follows:

(a) A letter dated October 10, 1946 from Yakovlev to United States Lines.

(b) A copy of a letter dated October 15, 1946, to Yakovlev [fol. 1386] from United States Lines.

(c) Copy of letter dated October 29, 1946, to Yakovlev from United States Lines.

(d) An eastbound contract ticket No. E 169377 issued to Yakovlev and family October 14, 1946.

(e) Advice slip for eastbound contract ticket No. E 169377 dated October 15, 1946.

(f) First page of first-class berthing, including name of Yakovlev and family.

(g) The cover of purser's first-class berthing list and page including name of Yakovlev.

(h) Cover of booklet entitled "List of First-Class Pas-

sengers." Also page of booklet including name of Yakovlev. Also page of booklet including deletions.

(i) First page of pamphlet entitled "Who's Who Aboard the SS America," and page including the name of Yakovlev.

He will further testify that the purser's first-class berthing list will show that the Yakovlevs were assigned to Room U-97; their ticket number was 169377; that the rate was $1035; that the party was bound for Russia; that the ticket was tax-exempt; that their New York address was 7 East 61st Street, New York City, and their telephone number was REgent 4-3490; that the party was originally scheduled to [fol. 1387] sail on December 5, 1946.

He would also testify that the blue checks on the purser's first-class berthing list indicate that the Yakovlevs were sailing for a French port, and the documents will also show that Yakovlev was vice-counsel in New York City of the Russian Legation.

(Marked Government's Exhibit 26-J.)

The Court: Mr. Lane, I believe what you could do is to characterize the exhibits and save the jury looking at them.

Am I correct in stating that they are all exhibits which pertain to the application for a ticket and the departure of Yakovlev from the United States?

Mr. Lane: That is correct.

The Court: Commencing with October 1946 and ending with his departure on the SS. America on the U. S. Lines on December 27, 1946.

Mr. Lane: That is correct, your Honor.

If the Court please, may I point out one or two things here? In the first-class berthing list you will note the designation room as U-97, and under the list of names, it contains the names of Anatoli Yakovlev, Mrs. Anatoli Yakovlev, Master Paul and Miss Victoria, their children, five years old, as indicated on the first-class berthing list, and it also shows [fol. 1388] here that in that particular room the Yakovlevs are listed as USSR, Vice-Counsel, New York, and it gives the rate, the ticket number, and also the place where they are returning, and you will note that on that is Russia. In Who's Who, which is a listing of the detailed information of certain passengers, Room U-97 is Mr. Anatoli Yakovlev and

family and it has the notation Vice-Counsel of the USSR, New York.

The letter which I have referred to of Yakovlev to Mr. Walklett of the United States Lines reads as follows:

(Mr. Lane reads exhibit to the Court and jury.)

[fol. 1389] The Court: Are you through with that phase of it?

Mr. Lane: Yes, your Honor.

The Clerk: Lan Adomian.

LAN ADOMIAN, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. Mr. Adomian, where were you born?
A. Russia.
Q. When?
A. In 1905.

The Court: Speak up, Mr. Adomian, we can't hear you.
The Witness: 1905.

Q. Are you an American citizen?
A. Yes, sir.
Q. When were you naturalized?
A. 1940.
Q. When did you first come to the United States?
A. 1923.
Q. Were you employed by the Amtorg Trading Corporation in New York at one time?
A. Yes.
Q. Will you tell us when?
A. In 1940.
Q. In what capacity?
A. As a translator.
Q. Do you know one Anatoli A. Yakovlev?
A. Yes.
Q. When did you meet him?

A. Around 1944.

Q. When did you meet him?

A. In 1944.

Q. How long a period of time did you know him?

[fol. 1390] A. Off and on for about two years, I would say.

Q. Now did you ever see him in the Soviet Consulate, in New York City?

A. I did.

Q. Do you know what his occupation was?

A. Vice Consul.

Q. Did you have some reason for going to the Soviet Consulate in New York City at that time?

A. Yes, I did.

Q. Will you fix the time when you saw Mr. Yakovlev in the Consulate, Soviet Consulate, in New York City?

A. I can't fix it exactly. I would say it would have been either the summer or fall of '44, I think.

Q. Had you seen him before that?

A. Yes.

Q. In the Soviet Consulate?

A. Yes.

Q. Did you go there on any particular business?

A. Yes, I wanted a visa to go to the Soviet Union for a visit.

Mr. E. H. Bloch: I am awfully sorry. Will you ask the witness to speak up, please?

The Court: Will you repeat that answer.

(Answer read.)

Q. When is the last time that you saw Yakovlev?

A. I would say some time in '46.

Q. I show you Government's Exhibit 15 in evidence and I ask you to look at the picture on that exhibit and tell me if you can identify that individual (showing).

[fol. 1391] A. That looks like a picture of Mr. Yakovlev.

Q. Well, is it Yakovlev?

A. Yes.

Mr. Lane: May the record indicate that the witness has identified the picture on Government's Exhibit 15 as Anatoli Yakovlev.

There will be no further questions, your Honor.

Mr. E. H. Bloch: No questions on behalf of defendants, your Honor.

The Court: All right, no cross.

(Witness excused.)

COLLOQUY BETWEEN COURT AND COUNSEL.

Mr. Saypol: We now have to proceed to bring a witness on from Laredo. We have another witness. Would this be an appropriate time to recess?

The Court: You say you have got to bring a witness from Laredo?

Mr. Saypol: Oh, yes.

The Court: You will have the witness here in the morning?

Mr. Saypol: By every possible means.

The Court: Very well.

Mr. Saypol: From Laredo, Texas.

The Court: Very well.

Then I take it that the Government will probably rest some time early tomorrow?

Mr. Saypol: That is my present expectation.

[fol. 1392] The Court: All right, I want the defense to make arrangements accordingly.

Mr. E. H. Bloch: Before the Court adjourns may we come up to the bench?

The Court: Yes.

The jury is excused until 10:30 tomorrow morning.

(The jury left the courtroom.)

(The following proceedings were had in the absence of the jury, at the bench:)

Mr. A. Bloch: I want to put on the record that last Friday, in answer to a query made by the Court, Mr. Saypol said that it would take him four to five days to complete his direct case, and again this morning Mr. Saypol positively stated that he would require all of Thursday to complete his case.

I also want the record to note that of the three days defense counsel had between Friday and Tuesday morning, two of those days, Saturday and Sunday, the defendants were not available to them for the purpose of going over

the Government's witnesses' testimony, which we think is fatal——

Mr. Saypol: You do not want to go so far.

Mr. A. Bloch: —is vital to the presentation of the defendants' defense.

[fol. 1393] The Court: Well, of course—are you finished?

Mr. A. Bloch: No. I just want to say that we have allocated the time that we thought we had at our command to do certain things in connection with the defense, and that we have not had the time to go over the testimony of the Government's witnesses so as to be able to go on tomorrow with the defendants' case, and I therefore must respectfully ask that a reasonable time be given defense counsel to start with their defense.

Mr. Saypol: I take it that there can be no criticism of me for having proceeded expeditiously. I thought I had made arrangements, or made a request that your clients be made available by the marshal on Monday.

Mr. A. Bloch: Yes, they were available yesterday, from 10 o'clock in the morning to five.

Mr. Saypol: Nobody did ask me, not that I considered it my obligation but nobody did ask me about the availability of the defendants for counsel over the week end. If they had—and it is not my problem but I still would have extended myself to see that they had access.

Mr. A. Bloch: As I understand the rules of the House of Detention, both men and women, they prohibit anybody [fol. 1394] from making any——

The Court: I could have made arrangements if the request had been made of me but nobody did.

My recollection is that when we adjourned last Friday I said up here at the bench, and I pointed directly at your son, Mr. Bloch, Jr.—I said, "You have a long week end. I want you to start working on your defense, I want you to start working with your clients. I want this case to proceed with dispatch."

Mr. A. Bloch: But we did work on the defense.

Mr. E. H. Bloch: We worked hard.

The Court: All right, and you did work hard. You did work Saturday and Sunday and you did utilize it. The only thing was you did not talk to your clients.

I will now order that their clients be made available for as long as they need them today and tonight.

Mr. Saypol: They have been right along, if your Honor please.

The Court: I don't want them hauled back to the House of Detention at five o'clock.

Mr. Saypol: You should make that direction to the marshal.

The Court: I will.

Mr. Saypol: I do not think it requires it.

The Court: Well, whether it does or not, I think the [fol. 1395] fault lies with the fact that you did not request Mr. Saypol or me to have them available. The chances are you did not need them, you were doing your own office preparation Saturday and Sunday.

Mr. A. Bloch: That is correct.

The Court: And you had all day Monday.

Mr. E. H. Bloch: We were with them.

The Court: I think you had an unusual amount of time which ordinarily isn't given to defendants in this case.

Mr. E. H. Bloch: Except that this is a pretty long prosecution.

The Court: It is rather short—much shorter than anticipated; only a little over two weeks.

Mr. A. Bloch: Five or six hundred pages of testimony.

The Court: And furthermore you have been with your client every day right along. I am sure you have discussed the evidence as it went in.

Mr. E. H. Bloch: We have discussed part of the evidence already.

The Court: It is not a case of discussing it anew.

Now your criticism of Mr. Saypol about what he said this morning——

[fol. 1396] Mr. E. H. Bloch: It is not a criticism.

Mr. A. Bloch: I am not criticizing anybody nor am I criticizing the Court.

The Court: All right, now the point is this: Why Mr. Saypol said it would take all day Thursday, I don't know. The only conclusion is that he saw his case concluding and he decided to shorten it some more.

Mr. A. Bloch: Because we conceded certain things.

The Court: Certainly you are not now going to take the good effort of the Court in constantly attempting to keep you advised, which many Judges don't do, as to when your case is going to begin. They don't even bother asking the Government, "When are you going to finish"? They finish and you start, and the mere fact that I constantly probed "When are you finishing, when are you finishing"? so that you would know that the end was coming near, we are not going to say that that caught you flat-footed; if anything, it should have given you ample opportunity to prepare.

Now you have put something on the record. You have something in mind in putting it on the record. You do not want to characterize it as criticism. No matter what you characterize it as, there is the reply to it.

Mr. A. Bloch: The reason I put it on the record is to [fol. 1397] have you give us a reasonable time. I think you have almost done it, but almost.

The Court: I think you have it already.

Mr. A. Bloch: If you had given us at least until tomorrow, two o'clock or 2.30 so that we would have all tonight and a half day tomorrow.

The Court: All right, you may consider that your defense does not go on until after the luncheon recess tomorrow. Is that satisfactory?

Mr. A. Bloch: Yes, that will be all right.

The Court: Is that satisfactory?

Mr. E. H. Bloch: Yes.

Mr. A. Bloch: Yes, it is.

Mr. E. H. Bloch: Now if the Court please, I am very glad that you said you would direct the marshal to keep them here at night.

The Court: Yes.

Mr. E. H. Bloch: Because during court days we get through here at half past four and at five o'clock they take them away.

The Court: I will do that.

Now off the record.

(Discussion off the record.)

The Court: Now this is a direction to the marshal.

[fol. 1398] Will you see that their clients are left right

here in the court house until the lawyers are through with them? I don't know what time it is going to be but arrangements will have to be made, and that will have to go now until the case is over.

So please tell whoever is in charge that I have so directed.

Deputy Marshal: All right.

The Court: All right.

Tomorrow at 10.30.

(Adjourned to March 21, 1951, at 10:30 A. M.)

[fol. 1399] New York, March 21, 1951; 10:30 o'clock a. m.

Trial resumed.

OFFERS IN EVIDENCE

Mr. Saypol: May I address the Court?

The Court: Yes.

Mr. Saypol: Pursuant to the provisions of Section 1733 of Title 28, I offer in evidence Government's Exhibit 18-A for identification.

Do you care to see it?

Mr. Phillips: For identification you can offer anything.

The Court: He is offering it in evidence.

Mr. Phillips: Oh, he is offering it in evidence. Let's see it.

The Court: He is offering 18-A marked for identification in evidence, but I don't think it should be under 1733, Mr. Saypol; it should be under 1732.

Mr. Saypol: Either 1732——

The Court: 1733 pertains to accounts and transcripts of proceedings. This is an entry made in the regular course of business and so it should be under 1732. That portion [fol. 1400] of 1733, I think you have reference to, permits authenticated copies to go in, in place of the original.

Mr. Saypol: As to this, if your Honor recalls, foundation was laid in the testimony of——

The Court: Yes, I remember that.

Mr. Saypol: I have asked for a concession of Mr. Phillips. He has refused.

Mr. Phillips: Just a moment. I object to his stating in court his request for any concessions.

The Court: All right, all right; just disregard that, ladies and gentlemen; just disregard that.

Mr. Saypol: The part that I intend to offer and use is the back sheet of the four-page document——

The Court: Mr. Phillips, please keep your voice down, will you?

Mr. Phillips: I beg your pardon?

The Court: Would you keep your voice down. I hear you whispering up here.

Mr. Phillips: I didn't know it was so loud, your Honor.

The Court: All right.

You said the back sheet?

Mr. Saypol: The back sheet particularly; that is all I require, and that portion, of course, as to which there has [fol. 1401] been a concession, that it bears Sobell's signature.

Your Honor may recall yesterday in the course of Colonel Cobb's testimony, the Court directed an inquiry to me as to the purpose of this material when I offered it, and I am prepared to state, if the Court so desires.

The Court: Well, we will see in a moment whether or not there is any objection.

Mr. Phillips: Objected to on the ground there is no foundation laid for the introduction of these papers. There is no connection whatsoever between these papers and the offense which we are trying in court now.

The Court: Well now, let me understand. Do you object because it is a photostatic copy?

Mr. Phillips: No, I do not object to anything because it is a photostatic copy. That you understand.

The Court: In other words, when you say "no foundation has been laid", will you be specific on that?

Mr. Phillips: It has not been shown that this paper in any wise relates to the subject matter of the issues.

The Court: I see. You are objecting on the grounds of relevancy.

Mr. Phillips: It is irrelevant and incompetent.

[fol. 1402] The Court: Very well. Now I will hear you on it, Mr. Saypol.

Mr. Saypol: I believe a foundation has been laid. The particular object for which I offer this is proof that the defendant Sobell was never——

Mr. Phillips: Just a moment. I object to counsel stating what his object in offering it is, because if he doesn't succeed in having it offered, the statement he makes may be worse——

The Court: Come up to the bench.

Mr. Phillips: —than the paper itself.

(The following took place at the bench, not in the hearing of the jury:)

The Court: I want to get one thing straight for the record now. You are not objecting because this is a photostatic copy; right, Mr. Phillips?

Mr. Phillips: Yes.

The Court: You are not objecting because it is not an entry made in the regular course of business or made from the regular files of Selective Service?

Mr. Phillips: No, I am assuming that is correct. I am taking their word for it.

The Court: You are objecting on the ground of relevancy and competency?

[fol. 1403] Mr. Phillips: Yes.

The Court: All right.

Let me hear why it is relevant.

Mr. Saypol: I want to use this to prove that the defendant was never in the Army, never was inducted. There was testimony yesterday by Mr. de Los Rios as to a conversation with him in Mexico City in which he said that he had had one experience and he did not want to be taken in the Army, that the military police were looking for him.

This record shows that consistently, at the time when he first came before the Board in July of 1943 until August 5, 1946, he was classified and reclassified, most of the time, in a deferred classification, and finally in 4-A, which indicates that he was never inducted.

The Court: Let me see the back sheet.

(Mr. Saypol hands to Court.)

The Court: I do not want to see any other statements here that in any way may be prejudicial.

Mr. Kuntz: There is some statement there about a neurosis.

The Court: Where, on the back page?

(After examining.) No, he is just offering the back *back*.

[fol. 1404] Mr. Phillips: No, he is offering the whole thing.

Mr. Phillips: No, I said the back page.

Mr. Kuntz: I did not hear it either.

Mr. Phillips: Just a moment. Then of course it is improper.

The Court: Why?

Mr. Phillips: To offer one page of a whole record?

Mr. Saypol: Where did you get that rule?

Mr. Phillips: Just a moment. That is obvious.

The Court: You can offer the balance.

Mr. Phillips: I want to say this, I am awfully sad that I am the only man in this place whose voice carries, but I don't mean it. I cannot help it. I am born that way. I talk with a distinct manner and method.

The Court: Wait a minute. He can offer any part of an exhibit and you can offer the balance of it, there is no question about that, and as a matter of fact, leaving out any portion that you contend is prejudice about neurosis.

Mr. Kuntz: We contend that the entire record is prejudicial.

The Court: Very well.

Mr. Kuntz: First of all, the ground that Mr. Saypol [fol. 1405] gave that a certain witness reported a conversation is certainly not a foundation.

Secondly, that the witness did not state that Sobell said that he was or was not in the Army. Sobell, according to the witness, is supposed to have stated that he was through one war. He didn't say anything about his having been in the Army.

The Court: Well, that may be so. I am not sure whether he used that language but there is an inference to be drawn from it that he served in the Army.

Mr. Kuntz: No, the inference was——

The Court: What is he running away from?

Mr. Kuntz: Because he saw the war coming.

Mr. Saypol: Yes, but he was deferred.

The Court: If there was a war he is in a country that is going to be in another war. He is in Mexico.

Mr. Kuntz: Who said so? He might go into South America.

The Court: How is he running away from a war?

Mr. Kilsheimer: Your Honor, he said he was afraid of returning to the Army (handing record to Court).

The Court: "He told me he was worried because—he said he was afraid to return to the Army, the U. S. Army [fol. 1406] since he already has seen a war, has experienced a war."

Mr. Saypol: What page is that on, Mr. Kilsheimer?

Mr. Kilsheimer: 1349.

Mr. Saypol: Your Honor, let the record show that page.

Mr. Kuntz: I do not understand the theory of the offer. If Mr. Saypol said that Sobell on the witness stand made such a statement and he wanted to contradict Sobell, that is one thing, but who is it contradicting, the testimony of his own witness?

The Court: No, it is not contradicting the testimony of his own witness. He is contradicting a statement made by Sobell to one of his witnesses.

Mr. Kuntz: No, no. He is contradicting a statement testified to by his own witness.

The Court: All right.

Mr. Kuntz: It may be true or may not be true.

The Court: Well, I don't agree with you.

Mr. Phillips: Judge, is there anything clearer in the laws of evidence than that?

The Court: Than what?

Mr. Phillips: Mr. Saypol's witness swears that someone, somewhere, told him something.

[fol. 1407] Mr. Saypol: Not "someone". It is a defendant.

The Court: I will tell you, the whole record, the whole file as a matter of fact is properly admissible as an entry made in the regular course of business. Here is a case right in our circuit, United States v. Ward, 173 Fed. (2d) 628, an opinion by Judge Frank—Learned Hand sat with Judge Chase, too.

> "Defendant also contends that records taken from the files of the Office of Selective Service Records were inadmissible. They were properly authenticated, being official records identified as such by their custodian."

And he cites Wigmore.

> "The main objection to the admission of these records is that the witness did not make the records and did not know when or by whom these particular records were made; in effect, it is that the entries in the files are hearsay. The government argues that this objection is met by its compliance with the 'entries in the regular course of business' statute, 28 U. S. C. A. Section 1732 * * *. Whether there was a sufficient foundation for admission under this statute we need not decide, for, to the extent the entries were hearsay, [fol. 1408] they were admissible as 'official statements' made in the course of the entrants' official duties as employees of the United States."

You have the same thing.

Mr. Kuntz: That is not the same thing.

Mr. Phillips: We are not making that objection.

The Court: You are making the objection on the ground that it is not relevant.

Mr. Kuntz: Yes.

Mr. Phillips: Yes, and prejudicial.

The Court: I understand.

Mr. Kuntz: Secondly, it is offered to contradict——

The Court: I get your point.

Mr. Kuntz: —the testimony given by their witness.

The Court: That is correct.

Mr. Kuntz: And third, it has nothing to do with the crime.

The Court: Now I think it is relevant, No. 2. I believe that the purpose is not to contradict the Government witness; the purpose is to contradict your client's statement.

Mr. Kuntz: Has our client said it?

The Court: As testified to by a Government witness. Right on the state of the record right now, that testimony [fol. 1409] stands. He has not been cross-examined. His story stands that your client told him the very thing that was just read into the record before, and that's it.

Mr. Saypol: I have a third basis for offering it——

Mr. Phillips: Just a moment.

Mr. Saypol: Let me supplement my position, if I may, and then you can argue. I have an additional basis for

offering this on the question of relevancy. That goes to the purpose of Sobell's flight to Mexico, which is part of my proof.

The Court: You mean on the fact that he was not about to be put in the Army, Mr. Saypol?

Mr. Saypol: Certainly.

The Court: That he was classified in a deferred classification?

Mr. Saypol: That is so.

The Court: I would say it is relevant on that, too.

Mr. Phillips: Let me say a word, Judge. Do I understand the ruling to be that a witness put on by the prosecution who testifies to a conversation with the defendant, that now it becomes relevant to introduce proof that the [fol. 1410] defendant lied to that man who is a witness for the Government in that conversation? Is that what this ruling is, as I understand it?

The Court: The ruling is as I made it, and I don't prefer to give it in your form of characterization.

Mr. Phillips: You haven't made it yet.

The Court: As I indicated I would make it.

Mr. Phillips: I see. Here is the way as I understood it, the way it seems to me that ruling would amount to.

The Court: I will tell you—maybe you can avoid all this. Would you stipulate this?

Mr. Phillips: Stipulate what?

Mr. Saypol: That he was not in the Army.

The Court: That he had never been in the Army.

Mr. Saypol: That is what I asked for this morning.

Mr. Phillips: I have been determined not to stipulate that, Judge.

The Court: Will you stipulate that he was not in the Army and that he was in a deferred classification?

Mr. Phillips: As senior counsel for the defendant, I decline to stipulate.

Mr. Saypol: That is what I asked for.

[fol. 1411] Mr. Phillips: I have already made up my mind that there was too much stipulation in this case, to make the path of the prosecutor too easier.

The Court: I want to tell you something, Mr. Phillips—off the record.

(Colloquy off the record.)

Mr. Kuntz: I have another ground, it seems to me, that might be available to us, which I urge, that in effect the defendant is being compelled to be a witness against himself, which certainly he cannot be compelled under our law.

The Court: If there was any basis to that statement you could never offer a record——

Mr. Saypol: You could never prove a case.

The Court: —of a defendant or offer any admissions that a defendant made.

Mr. Phillips: If this is admitted——

The Court: Now wait. Here is what disturbs me here. Where is there anything on the last sheet? Is there a signature?

Mr. Saypol: There has been a concession that that has been signed.

The Court: There is no question about the last sheet being part of his Selective Service record.

[fol. 1412] Mr. Kuntz: We are not raising a technical question like that.

The Court: All right, I am going to admit it. You can offer anything else.

Mr. Phillips: Let me make a final statement for the record. This is objected to on the ground that this is tantamount to the Government attorney putting a witness on the stand, having that witness, in reply to the Government attorney's question relate a conversation between that witness and a defendant, relate that conversation in allowing the Government to introduce proof that in that conversation the defendant did not tell the truth to the Government witness.

The Court: No, it does not amount to anything of that character, and you cannot characterize it quite as broadly as that. In the first place, it is not the Government who answers the question, or the Government attorney.

Mr. Phillips: It is——

The Court: Wait a minute. It is the witness who gives the testimony. The Government cannot help the fact that the witness gives this type of testimony——

Mr. Phillips: The Government——

The Court: Wait a minute; let me finish.

[fol. 1413] Mr. Phillips: Excuse me.

The Court (Continuing): —and his testimony stands on the record unrefuted. You did not cross-examine him. It is there. It must be accepted if they believe him.

Now when the witness gives his full story, part of which may be beneficial to your client, such as that he was leaving the country for an excuse, which your client gave from his own mouth to this witness, and that is that he had been in the Army and that he did not want to go through another war, the Government, in accordance with its theory for the admission of that proof in which to show flight, because of his commission of the crime charged, has a perfect right to show that he wasn't in Mexico City because of some other reason; otherwise the entire topic becomes irrelevant; the entire topic of flight becomes irrelevant and is directly admissible.

Mr. Phillips: Very good. Therefore we have this situation, that the Government attorney, in introducing the witness asks that question, "What conversation did you have with the defendant?" He therefore gets a conversation favorable to the defendant in that answer, and then not only [fol. 1414] nullifies that conversation but makes out the defendant to be a liar against himself——

The Court: That is right.

Mr. Phillips: —by introducing testimony——

The Court: Correct, but that is all part of the Government's case. He contends that your client was lying to this man.

Mr. Phillips: But the defendant did not say it. This man says the defendant said it.

The Court: All right, where is the proof that he did not say it?

Mr. Phillips: Where is the proof that he did say it?

The Court: This man.

Mr. Saypol: Will you just let me get this over——

Mr. Kuntz: May we have an exception?

The Court: You do not need it.

Mr. Saypol: Wait before you take it. There is something I want to add to my offer. In order to obviate the question raised by counsel with regard to neurosis, I suggest that these first pages be stapled together. I made my offer as

to the last page. I also make my offer as to the page as to [fol. 1415] which there has been a concession that it had been signed by him.

Mr. Kuntz: Let us say for the record——

Mr. Saypol: And this is also offered, the bottom of page 6 which relates to military service and as to which there is no answer, and as to that part his signature controls. That is the whole point (handing to Court).

Do you see what I refer to? I suggest if it were stapled, the balance of it stapled together, it can be submitted in that form to the jury.

The Court: You mean beginning with "Citizenship"?

Mr. Saypol: I am not particularly concerned with that, although I see no harm.

The Court: In other words, you are offering the last three pages?

Mr. Saypol: Yes. They are numbered at the bottom, if your Honor desires to examine it, or to make reference to it when you make your ruling, if necessary.

The Court: Well, there has been a concession as to the signature already on page 7, and there are no other questions and answers on page 7, so there is nothing prejudicial there. The signature is relevant.

Mr. Saypol: There is a concession as to that.

The Court: On page 6 all you have is that he was born in [fol. 1416] New York City, the date of birth, and that he is a member of the white race, and that he has not been convicted of any felony, and there is no answer to the matter of military service.

Mr. Saypol: That is right.

The Court: And on page 7 you have the classifications by the Board.

Mr. Saypol: I refer to the classification.

The Court: All right, I will admit pages 6, 7 and 8 of Government's Exhibit 18-A for identification.

Mr. Saypol: Would your Honor suggest—will your Honor approve my suggestion——

The Court: Yes.

Mr. Saypol: ——that the balance be stapled?

The Court: Yes, unless the defendant himself ask that the rest be opened.

[fol. 1417] (The following took place in open court.)

(Pages 6, 7 and 8 of Government's Exhibit 18-A for identification received in evidence.)

Mr. Saypol: May I proceed to read selected portions to the jury?

The Court: I might say to the jury that I have admitted a part of the Selective Service questionnaire of Morton Sobell into evidence. Now the fact that Mr. Sobell did not serve in the Army should not in any way prejudice you in your deliberations in this case. However, it is admitted on the theory that when Sobell is alleged by the witness Rios to have said that he had left the country because he had served in the United States Army and had been through one war and didn't want to go through another war, the Government contends that that was not the reason that he had left the country. Solely upon that basis and basis alone is this portion of the Selective service questionnaire admitted.

Mr. Phillips: Of course, we take exception to your Honor's statement.

The Court: Very well.

Mr. Phillips: As not entirely accurate.

The Court: What isn't accurate?

Mr. Phillips: I think the statement of the witness' testimony was not accurate.

[fol. 1418] The Court: May I have that testimony again so we will have no mistake about it?

On page 1349 of the witness Rios' testimony:

"Q. Was there anything more said in the course of that conversation? A. He told me he was worried because—he said he was afraid to return to the Army, the U. S. Army since he already has seen a war, has experienced a war."

Mr. Saypol: Mr. Schaefer, I think it was the Court's direction that this part of the exhibit be stapled together (indicating). You might do it at the bottom also so it won't fall apart.

Ladies and gentlemen, Government's Exhibit 18-A in evidence is the Selective Service questionnaire of Morton Sobell. At page 7 I direct your attention first to that por-

tion at the bottom which is labeled Registrant's Affidavit in which Morton Sobell says "I, Morton Sobell do solemnly swear that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read or have had read to me the statements made by and about me and that each and every such statement is true and complete to the best of my knowledge, information and belief." It is signed by Morton Sobell, sworn to by him before a notary public on the 2nd day of April, 1941.

[fol. 1419] Now, immediately preceding that on page 6, series 12 of this questionnaire refers to military service and under the instruction it is required that prior military service be described and that space is left blank; so there was no prior military service.

Now, on the last page are the minutes of the actions taken by the local board in respect to classification and induction of the registrant and you will find that starting on July 20, 1943 Sobell was classified in 2-A and those classifications of that type continued. He was before the Board and not in service up to October 9, 1945 when he was classified 4-F, and finally again on August 5, 1946 on the margin reading lengthwise he was again classified 4-F.

The Court: I might say to the jury, just look at pages 6, 7 and 8.

[fol. 1420] The Clerk: Elizabeth Bentley.

Elizabeth Bentley, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Miss Bentley, what has been your education?

A. I have an A. B. degree from Vassar College and a Master's degree from Columbia University, and I had a year's study in Italy.

Q. When did you graduate from Columbia?

A. I received my degree in January 1935.

Q. About that time did you join the Communist Party?

A. Yes, I joined——

Mr. E. H. Bloch: Objected to as incompetent, irrelevant and immaterial, remote to the issues in this case, and the introduction of this evidence can only serve to introduce the subject matter foreign to the issues.

The Court: I assume that this is the causal connection that we have been talking about between the membership in the party and intending to give an advantage to a foreign government, to wit, the USSR, as charged in the indictment.

Mr. Saypol: That is so, your Honor.

The Court: Overruled.

[fol. 1421] Mr. E. H. Bloch: I respectfully except.

Q. Will you tell us now when you joined the Communist Party, Miss Bentley?

A. Yes, in March 1935.

Q. What part of the party or what unit or what section did you join?

A. Well, I joined what was then Unit 1 of the Harlem section, New York district, of the Communist Party.

Mr. E. H. Bloch: I am sorry, but so that I don't get up and object to each and every question about Communist activities, may I have a continuing objection to this entire line of questioning concerning both the witness's purported affiliation with the Communist Party, as well as any other activities of the Communist Party, unless it is directly related to the defendants Rosenberg?

Mr. Saypol: That is what we are trying to prove.

Mr. E. H. Bloch: I understand. I just want to have my continuing objection and the theory of my continuing objection, so that I don't interrupt you, Mr. Saypol.

The Court: Overruled.

Mr. Saypol: Now, Mr. Reporter, will you be good enough to re-read the last question, and we will have the witness answer.

(Question and answer read.)

Mr. Saypol: We have an answer.

[fol. 1422] Q. How long did you continue as a member of that unit?

A. I was a member of that unit off and on, up until 1938, with brief periods when I shifted to a Home Relief Bureau unit and to a unit in the R. H. Macy Company.

Q. In that interval between 1935 and 1938, will you be good enough to describe for us what the activities were of one like you as a member of the Communist Party in the particular section or unit in which you were active?

Mr. E. H. Bloch: If the Court please, it is the "one like you," in addition to my general objection; I object to the form of the question.

Q. All right, I withdraw it and modify it to the extent that I shall ask you that you tell us what your activities were as a member.

A. Well, I belonged to what is technically called "a shop unit." That is a unit which is organized on the basis of where you work or where you study. I was then at Columbia University. That meant that we were a bit further underground than the street units which went around distributing Daily Workers. Our work consisted of paying our dues; reading Communist Party literature; and of carrying on Communist Party activities, such as putting out a Communist Party shop paper, infiltrating the Teachers College newspaper there, so that we could influence its policies; of [fol. 1423] infiltrating various religious and cultural organizations on the campus. It was that type of thing.

Mr. E. H. Bloch: Now I move to strike out the word "underground" from the witness's testimony.

The Court: All right, strike it out.

Mr. E. H. Bloch: If the Court please, I am sure that you understand the specific ground of my objections when I make them. It is in addition to the objection, substantively, or going to the substance of this entire line of questions.

The Court: All right.

Q. Now when you refer to the underground, is that a distinguishing feature of the type of activity that you have described to us in which you were engaged?

Mr. E. H. Bloch: Now, if the Court please, do I understand that you overruled my objection?

The Court: I had stricken that word out.

Mr. E. H. Bloch: Yes, I object to the form of the question.

The Court: Maybe there is some other point here now, I don't know.

Mr. Saypol: I beg your pardon.

Q. In July of 1938 did you obtain other employment?

A. Yes. At that time I got a position doing research work and secretarial work with the Italian Library of In-

[fol. 1424] formation.

Q. What kind of an agency, what kind of an entity was that? What were its activities?

A. That was the American division of the Italian Propaganda Ministry.

Q. Did it have any governmental connection?

A. Oh, yes. It was a part of the Italian Government at that time, and, in fact, did register under that Foreign Agents' Registration Act.

Q. At the same time did you continue your membership in the Communist Party?

A. Yes, I did.

Q. That is while you were employed in that Italian governmental agency?

A. Oh, yes, I did.

Q. About that time did you know one F. Brown?

A. Yes, I met Mr. F. Brown when I took the position with the Italian Library. I went direct to the ninth floor of the Communist Party in New York. The ninth floor is where the then Central Committee members were; and I spoke——

Q. You mean the headquarters of the party here in New York?

A. That is, the headquarters of the New York district is on the fifth floor, and the ninth floor is the national headquarters.

Q. And who is Mr. F. Brown?

A. Mr. F. Brown, whose real name was Ferruccio Marini, was probably the leading Italian Communist in this country at that time.

[fol. 1425] Mr. E. H. Bloch: Oh, I object to that.

The Court: Let's strike that.

Mr. E. H. Bloch: In addition to the objection that I have to the general line of testimony, I would like to record my

objection at this time, because of the formulation of this last question, as well as the anticipation that there may be further questions about this line, upon the ground that this witness has not been qualified to be an expert on the Communist Party organization.

The Court: That is exactly what Mr. Saypol, I take it, is trying to do.

Mr. E. H. Bloch: I mean up to now, you see, he hasn't done it. I think he ought to do it, if that is the object of the testimony.

The Court: He is trying to do it. How can he do it unless you concede it?

Mr. E. H. Bloch: I certainly will not concede it.

The Court: All right.

Mr. E. H. Bloch: I will not concede it because I don't know, your Honor.

The Court: Very well.

Q. From your experience as a member of the party up to that time, did you have knowledge of Mr. Brown's position in the Communist Party as an official?

[fol. 1426] A. Yes, I was told just previous to that what his position was.

Q. What was it?

A. His position then was——

Mr. E. H. Bloch: Pardon me, Miss Bentley. I am sorry. I didn't want to disturb you but I was going to get up as long as you stopped. I apologize. I would like to object now, your Honor, upon the additional ground that any conversations had by this witness with others outside the presence of these defendants——

The Court: He hasn't asked for conversations.

Mr. E. H. Bloch: She is stating it, your Honor.

The Court: She is stating what the position of a man is.

Mr. Saypol: On the basis of knowledge.

The Court: On the basis of knowledge.

Mr. E. H. Bloch: No, but I think if your Honor will read her last few words you will find that she is now attempting to give a conversation with a Mr. Brown. Now, if I am mistaken I will withdraw that specific objection but——

The Court: Don't give us any conversation with Mr. Brown, Miss Bentley.

The Witness: I wasn't, your Honor.

Mr. Saypol: I want to say this: Mr. Bloch is distinctly in [fol. 1427] error when he says that Miss Bentley's testimony, what she is telling us, is based on conversation with Mr. Brown.

The Court: I think Mr. Bloch, Jr., was talking to Mr. Bloch, Sr., and didn't hear the question at that time. He didn't ask for conversation.

Mr. E. H. Bloch: But there was something about what she was told.

The Court: No.

Mr. E. H. Bloch: And, you see, if she was told——

The Court: All right, don't argue the point. Go ahead.

Q. Once again, on the basis of your activities, as you have described them, as a member of the party, your observations, did you have knowledge of the stature or the status of Mr. Brown in the Communist Party?

A. Yes, I did.

Q. Who was he? What was his position?

A. His position in the Communist Party was, as I was told, was to handle the Italian Communist activities in this country and abroad.

Q. As a result of this——

Mr. Bloch: Now, I am sorry, Mr. Saypol. Maybe we [fol. 1428] ought to clarify this. Then I won't pop up and make objections, because if I am overruled——

The Court: You were objecting to her saying "as I was told."

Mr. E. H. Bloch: That is correct.

The Court: All right.

Did you know of your own knowledge?

The Witness: What do you mean, from my own knowledge?

The *Witness*: Did you know from your own knowledge and from your own observations, without somebody else telling you, what position he occupied?

Q. Did you see him at headquarters?

A. Most certainly. He had an office on the ninth floor. I didn't realize that is what you were referring to.

Q. Did he have an office and did he send for people and did he give them orders in your presence?

A. Of course, he had an office on the ninth floor, not too far from Earl Browder, down the hall a ways from him. He was treated as an important person; he called people in and gave orders. Is that what you mean?

Mr. Saypol: That is what Mr. Bloch wants, I take it.

Mr. E. H. Bloch: I don't want it. I just want competent evidence.

The Court: He doesn't want anything.

[fol. 1429] Mr. Saypol: Excuse me. I mean, that is what I want, but I am afraid Mr. Bloch doesn't want.

Mr. E. H. Bloch: Now, Mr. Saypol, I don't think——

The Court: All right, no by-play, gentlemen. Let's go.

Q. Now, then, having established Mr. Brown's stature—what did you say his name was, his real name?

A. Ferruccio Marini.

Q. You say you went to his office in the Communist Party headquarters and you had a conversation with him; is that correct?

A. That is correct.

Q. As a result of that conversation, did you change the form of your activities, as a member of the Communist Party?

A. Yes. I went, as it was termed in the party, underground and I no longer attended any unit meetings. If I met fellow Communists on the street, I was to pretend I didn't know them. If they asked me what I was doing, I was to dodge their questions; if necessary, I was to tell them that I had walked out of the Communist Party. I was to be responsible to only one man.

Q. I notice that I overlooked something. Just before you went underground, at the time you were at Columbia as an open member—can we refer to it now as "open" and "un-[fol. 1430] derground" membership? Is that the way it was referred to in the party?

A. In that context I was using underground in the sense that it was not completely out in the open.

Q. Well, I want to refer for a moment to Columbia. At that time did you take any part in the activities of the Young Communist league at Columbia?

A. Not directly, because I was a member of the party, being too old for the YCL, but we did work with the YCL unit on the Columbia campus, because their activities intercrossed in that way.

Q. Was the Young Communist League considered, recognized as a part or as an agency of the Communist Party?

A. Oh, definitely.

Mr. Kuntz: I object to that, if your Honor please.

The Court: Overruled.

Mr. Phillips: I object to it on the ground that the question is too vague, "was recognized as part"; recognized by whom?

The Court: All right, recognized by whom?

Q. Recognized and accepted by members of the party as an integral unit of the Communist Party?

A. Yes.

Mr. Phillips: That is still objected to. This is not an [fol. 1431] authenticating statement that she is making.

The Court: Go ahead. Did you give your answer?

The Witness: The YCL was recognized by the Communist Party as being the younger edition, so to speak.

The Court: You are talking now as a member of—at that time, as a member of the Communist Party?

The Witness: That is correct; the YCL no longer exists.

The Court: And at that time, as a member of the Communist Party, was it understood among members of the Communist Party that the YCL was a part of the Communist Party for people who had, for Communists, but of a younger age group?

The Witness: Yes, that is correct.

Mr. Phillips: Your Honor will pardon me for saying that my objection put to the question is equally as to the language the Judge just used.

The Court: Very well.

Mr. E. H. Bloch: I wonder, Mr. Saypol, would you fix the time here?

The Court: Yes, will you fix the time, please?

[fol. 1432] Mr. Saypol: I referred in my question to the time when Miss Bentley was at Columbia. I have gone back for a moment in respect to the Young Communist League.

Q. That was between 1935 and 1938?
A. Yes. It was 1935, 1936 and 1937; along in there.
Q. I take it your knowledge of the relationship between the Young Communist League and the Communist Party of the United States is founded on your own activities pursuant to directions that you obtained in the course of your membership in the Party?
A. That is right.

Mr. Phillips: I object to that. That is not a question. That is a statement of Mr. Saypol. It is not a question at all.
The Court: Overruled.
A. Yes, that is correct.
Mr. Phillips: Exception.
The Witness: Our unit, my Communist Party unit carried on joint activities with the YCL, not only of the Columbia campus, but also at meetings at the Harlem session.

Q. Now, let us go forward again to the conversation, your going underground and this conversation with Mr. Brown. Did there come a time when you met one Jacob Golos?
A. Yes.
[fol. 1433] Q. When was that?
A. That was roughly I would say in the middle of October 1948.
Q. What were the circumstances of your meeting with Mr. Golos?

The Court: Now wait, Mr. Saypol. Are you connecting this up with the conspiracy here?
Mr. Saypol: Oh, yes. I am coming right into it.
The Court: All right.

A. Mr. Brown said that he was terrifically overworked and that he would therefore have to turn me over to another contact to take care of me. At that time, you see, I was

taking material from the Italian library and passing it on to Mr. Brown, and he said I should have another contact who would be my Communist superior.

Q. That was Mr. Golos?

A. That was Mr. Golos.

Mr. E. H. Bloch: May I ask a question of the Court? I am a little confused in the light of the last question. It was my understanding from Mr. Saypol's statement in response to a former inquiry from the Court that this witness is to testify to show a causal connection—I am using causal in the sense that we have used it in our colloquy—between membership in the Communist Party and the crime charged in this indictment.

The Court: Or certain elements of the crime.

[fol. 1434] Mr. E. H. Bloch: Well that is what I am asking the Court now. Now, from the last question and answer I am led to believe that this witness is also going to testify or attempt to testify concerning events which will relate to the charge over and above the question of Communist Party membership. Now I just want to clarify it in my own mind.

The Court: Let us wait and see.

Mr. E. H. Bloch: Well, you see at the beginning I got the impression that the sole purpose of her testimony was to try to tie up the Communist Party.

The Court: I don't know. It may be twofold. Let us wait.

Mr. E. H. Bloch: Well, I wanted to clarify it in my own mind. I will wait.

Mr. A. Bloch: May I move to strike out the last answer of the witness upon the ground that it appears that it is heresay. She has related a conversation somebody had with her.

The Court: I will have to hear the answer.

Mr. Saypol: It is quite obvious to me inevitably these things do creep in. Counsel is not alert and then raises an objection. I do not intend to stop my witness from testifying. I don't think the hearsay rule is so tightly adhered to [fol. 1435] that I have to set definitely concrete barriers——

The Court: Let me hear the answer.

(last answer read.)

The Court: Strike out the answer. We will characterize the answer in this fashion; That the witness was turned over by Mr. Brown who had been her superior to Jacob Golos who was to succeed Mr. Brown. At that time she had turned over information from the—where was the information coming from?

The Witness: From the Italian Library of Information.

The Court: From the Italian Library of Information to Mr. Brown.

Mr. A. Bloch: May I object to this question as technically putting in the witness' mouth what she is to answer.

The Court: The witness has answered. You objected to the hearsay portion. I struck out the heresay portion and let the rest of the answer stand, Mr. Bloch.

Mr. A. Bloch: Well, the entire answer was heresay.

The Court: No, it was not. Only that portion of what Mr. Brown had told her about why he was turning her over. The objection is overruled.

[fol. 1436] Mr. A. Bloch: Exception.

By Mr. Saypol:

Q. At that time, in the fall of 1938, was it, you first met Mr. Golos?

A. Yes. In October 1938.

Q. Until when did you continue your activities in the Communist Party in association with Mr. Golos?

A. Until his death on November 25, 1943.

Q. That is for a period of approximately five years?

A. Yes, that is correct.

Q. Did you come to know what Mr. Golos' position was in the Communist Party of the United States?

A. Yes, I did.

Q. And what was it?

A. He was one of a three-man control commission and he had numerous other positions from time to time.

Q. What was the control commission?

A. The control commission was that organization which kept the membership in line and told them what they should do, put them out if they didn't behave and so on.

The Court: You referred to a three-man control commission of the Communist Party?

The Witness: Yes, there were three men, three main men on the control commission, yes.

Q. Now, what did you do in connection with Mr. Golos and members of the Party in that five-year period? What [fol. 1437] were your activities?

A. I continued myself to collect information which was to be passed on to Mr. Golos.

Q. Were you underground as you have described it?

A. Very definitely underground.

Q. How about Mr. Golos?

A. Mr. Golos himself was underground but inasmuch as he was known around Party headquarters he probably didn't take the same precautions in the underground that I did.

Q. Was his office at Communist Party headquarters here in New York or elsewhere?

A. His office was a business and it was a cover for his activities. He ran World Tourist.

Mr. A. Bloch: I move to strike it out.

The Court: Strike out "cover," but tell us what else he did.

Q. Where were his headquarter?

A. His headquarters were at World Tourist.

Q. What was World Tourist?

A. World Tourist was a travel agency which was set up originally in 1927 by the Communist Party.

Mr. E. H. Bloch: If the Court please, I move to strike out that latter part, that it was set up in 1927 by the Communist Party unless this witness can definitely swear that she knew that to be a fact.

[fol. 1438] Mr. Saypol: I object to summation. This is a statement that has been made from the witness stand. The witness is under oath. This is a kind of intimidation or summation and I object to it.

Mr. E. H. Bloch: I am not summing up.

The Court: Your objection is overruled. Proceed.

Mr. E. H. Bloch: I respectfully except.

Mr. Phillips: May I make one general objection which will stand for the rest of the witness' testimony? I object to all that this witness testified to not within her own

knowledge, all of this gossip about this one being one of three big men or this one being one of twelve big men, as not within her knowledge.

The Court: Your observation is highly improper because you don't know whether it is not within her own knowledge. You are summing up something which is wishful thinking. I assume that when you said he was one of three members of the commission, the high commission, that you knew that of your own knowledge.

The Witness: That is correct, Judge.

Mr. Phillips: I wanted to establish that she is testifying from her own knowledge.

[fol. 1439] (Last question and answer read.)

By Mr. Saypol:

Q. At this time, Miss Bentley, had you learned what was the relation of the Communist Party of the United States to the Communist International?

A. It was part of the Communist International and subject to its jurisdiction as such.

Q. Where were the headquarters of the Communist International?

A. In——

Mr. E. H. Bloch: If the Court please, I don't know whether I am out of order, but since about five or ten minutes have elapsed from the time I made my first objection, I just want to interject here that my objection persists to this entire line of questioning. I don't want time to be deemed as a waiver of my objection.

The Court: I don't know what is the good of getting up originally and asking for a blanket objection to this line and my having given it to you, when you are going to jump up with each and every question anyway. So you might as well revoke that request for a blanket objection and take your objections with every question.

Mr. E. H. Bloch: No, I want to accede to my original request for a blanket objection.

The Court: All right.

[fol. 1440] By Mr. Saypol:

Q. I think you told us a moment ago that the Communist Party of the United States was a part of the Communist International?

A. That is correct.

By the Court:

Q. Can you tell us up until what time that condition existed of your own knowledge if you can?

A. It has always existed.

The Court: Very well.

The Witness: At least during the time that I was in the Party.

Q. You told us Golos died in November 1943?

A. That is correct.

Q. Did you continue your activities after that?

A. Yes. After his death I was passed on to another contact, and finally to my last contact, Mr. Anitol Gromov who was first secretary of the Russian Embassy.

Mr. E. H. Bloch: May we have the time fixed on this latter statement?

Q. When was Gromov your contact?

A. You mean when did I meet him?

Q. Yes.

A. I met him in October 1944.

Q. How long did you continue?

A. I think the last time I saw Mr. Gromov was late [fol. 1441] November or December 1945.

Q. During the time you were a contact for Golos were there any activities that led into the Soviet Embassy?

A. I don't quite understand your question.

Q. I say during the time that you were contact for Golos, that is from 1938 until 1943——

A. Yes.

Q. —do you know from your activities with him whether any of those things led into the Soviet Embassy?

A. Yes. The information was sent to the Soviet Embassy.

Q. Now, in that period in your association with Golos and

with the second contact after that and with Gromov, is that it?

A. Yes, Gromov.

Q. Then what did you do as an underground member pursuant to directions from either of them or any of them?

A. I would say the bulk of the work was collecting information from Communists employed in the United States Government and passing it on to Mr. Golos or other Communist superiors for transmission to Moscow.

Q. Well, what connection did the Communist Party membership of you and Golos have with the destination of this material to Russia?

A. The Communist Party being part of the Communist International only served the interests of Moscow, whether it be propoganda or espionage or sabotage.

[fol. 1442] By the Court:

Q. Well, what is that statement based on, may I ask?

A. It is based on what I have been told by all of my Soviet superiors that I have dealt with, plus what has been told me by Mr. Earl Browder and a number of other people.

Q. Is it based also on your observation in the Communist Party.

A. Yes.

Q. Over what period of years?

A. Actually the fact that the American Communist Party carries out the directives of Moscow and regards it as its spiritual father, and the literature I have seen.

Q. Literature that you read at the Communist Party meetings?

A. Yes. My basic knowledge was that I gave orders to Earl Browder after the death of Mr. Golos, transmitted orders from Moscow to him, and he had to accept them. Sometimes he would fight against them, but he ended up by accepting them.

Q. You say he had to accept them. That is the very thing I am getting at. What was there about membership in the Communist Party which made that implicit in the membership that he would have to accept them? Was there an oath taken as a member of the Communist Party or something of that character?

A. Not when I went in in my day, but it was—it became [fol. 1443] implicit after you had joined it.

Mr. E. H. Bloch: I move to strike out the answer as not responsive to the Court's question.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Implicit in what respect?

A. I mean in the sense when you had realized you were serving the interest of Moscow and refused to carry them out, you were immediately expelled.

Q. Was that in a charter or did you see that in operation, or did that occur at meetings?

A. It isn't in a charter because Communists don't put that in a charter. I saw it in operation.

Q. Were there meetings, did I understand, of the particular divisions of the Communist Party from time to time?

A. Yes.

Q. And did you attend meetings of the particular division to which you belonged?

A. Well, yes. In the days when I wasn't underground I did, yes.

Q. You say the literature would be read?

A. That is correct and the Party line would be given to you that you were to assume in certain cases.

The Court: All right, proceed.

By Mr. Saypol:

Q. Throughout the whole period both above ground and [fol. 1444] underground was there continual consideration of the Party Line, meaning the line from Moscow, as it deviated and changed, and was it submitted for consideration and for adoption by the members of the Party?

A. Never.

Q. Now, the Court has made some reference to a charter: Were the activities that you were engaged in when you were underground the subject of charter reference? Was there any such thing as a requirement to adhere to a constitution when you were underground?

A. No. When you were underground you were subject only to the exigencies of the moment.

Q. When you say the exigencies I take it you mean you followed the directions of your superior?

A. That is correct.

Q. And when you talked a moment ago about your giving directives, Soviet directives to a man like Browder, I assume you in turn would receive those instructions from either one like Golos or one like Gromov?

A. That is correct.

Q. Who was connected with the Soviet diplomatic representation here?

A. That is correct.

Q. Will you describe to us——

The Court: Excuse me.

[fol. 1445] By the Court:

Q. Did you have reason to believe that after you went into what you call the underground that the policy of the Communist Party in any way changed on the part of those who were still in active membership in the Communist Party with respect to following what you call the Party line or the dictates of the Communist International?

Mr. E. H. Bloch: Now if the Court please, I object to the Court's question because it presupposes a state of facts not proven, for this reason: This witness answered so far as the witness' membership in the Party was concerned that these deviations were never brought home to them.

The Court: What deviations?

Mr. E. H. Bloch: She testified whenever there was a change in the Party line from Moscow, dictated by Moscow, certain top people would know about it; there would be orders given.

The Court: Orders given to the members of the Party.

Mr. E. H. Bloch: But not to the members. I would like the Court—and I am sure——

The Court: All right.

[fol. 1446] By the Court:

Q. Now, were the orders given to the members of the Party?

A. Certainly they were. The orders went right straight down the line. Certainly.

By Mr. Saypol:

Q. Can you tell us in your performance of this work, were you characterized as a courier? Was that your general description?

A. First, when I was doing espionage work I was a courier. Then on Mr. Golos' death I got promoted up; the rank was considered more than a courier because I was actually acting; I had a larger group of people, more responsibility. So it was a little bit higher job than that.

Q. In the place which you occupied as you described it, can you tell us who some of your contacts were?

A. You mean the people I had working in Washington?

Q. People from whom you received information or material?

A. Well, I had quite a number of them. I had two groups down there. Then I had quite a number of isolated individuals. Do you want me to list them all? There must have been some 30-odd altogether.

Q. I think you have already testified before that one was a man named Abraham Brothman, is that right?

A. Yes.

[fol. 1446a] The Court: We have gone past our recess time. We will take our morning recess at this time.

(Short recess.)

[fol. 1447] Q. You told us before the recess, Miss Bentley, that at various times you had as many as 30 sources of information for whom you served as contact, is that correct?

A. I think it was slightly more than 30. I haven't added them up, Mr. Saypol.

Q. Did those activities continue up until 1945 or 1946?

A. Yes. I went to the FBI in the summer of 1945 and told them what I had been engaged in and they asked me if I would continue these activities under their guidance, which I continued to do.

Q. Until when?

A. So that actually I think it continued up until 1947.

Q. Now, can you tell us from what source—what was the

initial source of these individuals from whom you obtained information as a contact?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. All these contacts were—at least the ones that I handled, were obtained from the American Communist Party.

Q. Was that, so far as you know, the universal rule or were there exceptions?

A. Well, I think two or three that I had were not actually [fol. 1448] Party members but they were obtained through the Party. There were exceptions to that—people that Mr. Golos handled who had been bought or there were other people who had been obtained directly without going through the Party.

Q. What methods were utilized, and what did you do to assure yourself of the continuing loyalty to the Soviet cause of these contacts with whom you transacted this business?

A. We kept them good Communists. We collected their dues. We gave them the same literature that the people in units were receiving and we hammered into them the idea they were good Communists and therefore they must work for Russia.

Q. So that it was the adherents of the Communist Party of the United States to the Communist International that served as the source of these espionage agents and it was likewise those persons that were utilized to maintain their continuing loyalty and adherance to the cause, is that correct?

A. Yes.

Mr. E. H. Bloch: I object—wait. I move to strike out the answer because it got in before my objection. I object to the form of the question upon the ground that it is argumentative, upon the ground that it is leading and suggestive and upon the ground that it is a summation.

[fol. 1449] The Court: Wait a minute—I will sustain the objection on that ground.

You may break it down and ask the question step by step.

Q. Is it correct, then, Miss Bentley, that for the purposes —I withdraw that.

Is it correct for me to say——

The Court: Perhaps——

Q. —or is it the fact——

The Court: May I ask a few questions?

Mr. Saypol: Indeed.

By the Court:

Q. Based upon your membership in the Communist Party, based upon your work for the Communist Party and your activities in behalf of the Soviet Union, can you say that there was a close relationship, indeed almost an adhesive relationship between the Communist Party of the United States and the Communist International?

A. Yes, quite definitely.

Q. Can you further say that at every meeting of the Party that you attended or at a great many of the meetings which you attended that adhesive quality was preached to the membership?

A. Yes, that is correct.

Q. Would you say further from your experience that any member of the Communist Party of the United States who [fol. 1450] did not adhere to the Party line as dictated by the Communist International would be expelled from the Communist Party of the United States?

A. Yes, they would be.

Q. And were so expelled when they did not adhere?

A. Yes, they were.

The Court: Do you want to take it from there?

Mr. Saypol: Yes, if I may. I think your Honor has—well, I wanted to make an observation but I do not think it is necessary. Your Honor has relieved me of a considerable burden.

Mr. E. H. Bloch: Ah, Mr. Saypol—I object to the statement.

The Court: All right, strike that statement.

By Mr. Saypol:

Q. In these activities—I will withdraw that for a moment. Did that continue until the time after 1945 when for a spell, as you have testified, you continued your activities under the supervision of the Federal Bureau of Investigation?

A. That continued until my last connection with the Communists, from my own practical knowledge, which would be in the spring of 1947, yes.

The Court: I think I forgot to ask, were the headquarters of the National or of the Communist International—was [fol. 1451] that in Moscow?

The Witness: That was in Moscow, yes.

Q. One question as to this: I take it that you, on occasion, went to the headquarters of the Communist Party here in New York?

A. Yes. After Mr. Golos' death I went almost every week or every two weeks to see Earl Browder and numerous other people, but particularly Earl Browder.

Q. Where were the offices of the top officials of the Party?

A. On the 9th floor.

Q. Can you describe to us, were those offices open and accessible to the public the same as any other business offices in a commercial building?

A. No.

Mr. E. H. Bloch: May I have the time fixed, your Honor?

The Court: Fix the time.

The Witness: Well, the time that I was going to see Mr. Browder would have been from about the early part of—let me see, the first of December 1943 up until the time that he was ousted from the Party, which was in the late spring of 1945.

Q. During that period from 1943 to 1945 was the atmosphere on this 9th floor such that it was open and accessible to the public? Did anybody walk in to visit one of the functionaries?

[fol. 1452] A. No, it was extremely difficult to get to the 9th floor, as a matter of fact, because it is one of those buildings that on one side has the Workers Book Shop and on

the other has the elevator going up to the various offices—some of them Communist newspapers, and some things like the New York District but to get to the 9th floor is very, very difficult.

Q. When you say "difficult" you mean difficult because it is a tortuous route or do you mean that access was restricted?

A. Access was definitely restricted. There was only one elevator that went to the 9th floor and they had to know you very well or you had to have credentials in order to get on that elevator, and if you got on it and tried to get off on the 9th floor and they did not know you, you went down again because I had that happen to me twice before they got to know me rather well.

Q. Well, do you know—excuse me.

A. (Continuing:) Then when you reached inside the elevator, then again there was a barrier, there was a locked door that the receptionist could click and the receptionist had to know you to let you through or else have orders to let you through.

Q. Was that distinction applied between the public on the one hand and Party members on the other, or were the restrictions applied also to members of the Party? In other [fol. 1453] words, could any member of the Party get in there?

A. No.

Q. In other words, only certain members who were known?

A. Only very special members could get up there.

Q. Coming back now to your activity as a courier, in what name or under what name were you known?

A. Well, to my Washington contacts I was pretty much known as Helen. In one case I was known as Joan. I was known at one point to my Russian superiors as Mary. I had a sort of collection of names along in there.

Q. Come back now to the time when Golos was your superior—by the way, by what name was he known to his contacts?

A. I would say to the majority of them he was known as John.

[fol. 1454] Q. Is that the name by which you first knew him?

A. No, I was introduced to him first by the name of Timmy.

Q. How long was it before you got to know his name?

A. I think it was about a year.

Q. Were there occasions in your own work as a courier when you used your own first name, your true first name, Elizabeth?

A. Yes, there were occasions, although later, quite later on in the work, it was rather dangerous to do it. We didn't —yes, part of the time I did.

Q. In the course of your Communist Party activities with Golos, were there occasions when you accompanied him to meetings or to the vicinity of meetings that he was holding with some of his contacts?

A. Yes, quite a few occasions. We would possibly be on our way to dinner and going to some other place, and I would drive along in his automobile with him.

Q. Do you recall when there was any occasion like that, when you accompanied him to the vicinity of Knickerbocker Village?

A. Yes, I do remember.

Q. About when was that?

A. I should say it was in 1942, probably in the early fall, possibly, of 1942; might have been late fall.

Q. Will you describe what occurred?

[fol. 1455] A. Yes. Mr. Golos said that he had to stop by to pick some material up from a contact, an engineer.

Mr. E. H. Bloch: Pardon me. May we come to the bench now?

The Court: Well, do you want to take an objection?

Mr. E. H. Bloch: I certainly do.

The Court: I think I must sustain this objection.

Mr. Saypol: As a matter of hearsay?

The Court: Yes.

Mr. Saypol: That's all right.

Q. Don't tell us about conversations, if you will, with Mr. Golos. Tell us what occurred; tell us what you knew, what knowledge you had.

A. Mr. Golos parked the car; left me in it; went across the street to wait on the corner for his contact to appear;

paced up and down for a bit. Then the contact finally arrived. Then they went three or four doors down to, I think, a candy store to carry on their business. Then Mr. Golos returned to the car with an envelope of material which he had received from the contact.

The Court: Miss Bentley, during this period of time that you talk about, we will say, '41, '42, '43 '44, were you personally receiving any material relating to the national [fol. 1456] defense, of a secret nature?

The Witness: Yes, I handled all the American Communists who were working in the United States Government, and I was getting it from agencies like the OSS and the Treasury.

The Court: You were?

The Witness: Yes.

The Court: And this material was then transmitted to Russia?

The Witness: That is correct.

Mr. E. H. Bloch: Now, if the Court please, in order to keep the record straight, I object to any activities of this witness with Golos in the year 1942, relating to a specific act, from which one can infer an illegal act, unless it is directly related to——

The Court: All right, I will sustain your objection.

Q. You told us a little while ago about a trip that you took with Mr. Golos in the vicinity of Knickerbocker Village; is that right?

A. That is correct, yes.

Q. You told us that you saw Mr. Golos approach a man.

A. A man approached——

The Court: I sustained the objection to that, Mr. Saypol. [fol. 1457] Mr. Saypol: May I approach the bench, if the Court please, now?

The Court: All right.

(The following took place at the bench, outside the hearing of the jury:)

Mr. Saypol: Judge Hand, in his latest pronouncement on circumstantial evidence, in the Hoffman case, decided a week ago, or two weeks ago, reiterates what he said many

times before about circumstantial evidence. There is circumstantial evidence here and it should be left for the jury to judge whether Julius Rosenberg was one of his contacts; whether Miss Bentley was an intermediary to effect arrangements with him.

The Court: Does she identify Rosenberg?

Mr. Saypol: She doesn't identify him except as "Julius, an engineer," who lived in the vicinity of Knickerbocker Village, whom she served to effect meetings with.

The Court: That is all right, you can get that; you can get that. She was called by a man Julius, and so forth, particularly in view of the testimony of Elitcher.

Mr. Saypol: That is right.

The Court: Yes, but now you are getting to a specific meeting where she didn't identify a man, and I would [fol. 1458] much rather not have that in.

Mr. Saypol: She can describe him.

The Court: Does she describe him in any way so that it is actually Rosenberg?

Mr. Saypol: She describes him in such a way but she cannot say that that was the man.

The Court: I know that.

Mr. Saypol: She describes him by height.

The Court: Then will we have something in the record eventually, so that the jury can then have something to base its conclusion on?

Mr. Saypol: Yes.

Mr. A. Bloch: The objectionable feature, as I see it, is that Golos, it is admitted, died in 1943.

Mr. E. H. Bloch: '42.

The Court: Yes.

Mr. A. Bloch: How is anything that is prior to 1944 material to the indictment?

Mr. Cohn: I am referring to the Dennis case, your Honor.

The Court: Yes, that is what I have reference to. Here is the language that they used there, and I am quoting now from United States vs. Dennis, 183 Fed. (2d) 201, on page 231:

[fol. 1459] "There can be no logical reason for limiting evidence to prove that the defendants were in a conspiracy between 1945 and 1948, to the period of the charge. If they

were in the conspiracy earlier, declarations of anyone of them or of any other person acting in concert with them are as competent as those made within the period laid."

Mr. A. Bloch: Correct; declarations made.

The Court: Yes.

Mr. A. Bloch: He is not calling for any declarations made.

The Court: How about an act? Doesn't an act fall in the same category as a declaration?

Mr. A. Bloch: No, I think declarations are very material to show a predisposition.

Mr. E. H. Bloch: If the Court please, you cited the Dennis case once before. I think we discussed this problem. I read this Dennis case and it was my impression, although I don't dispute what the Court read, of course, that in a sense this is torn out of context, and I will tell you why: The charge in the Dennis case was that the eleven leaders of the Communist Party advocated the overthrow of the Government by force and violence, and I think Judge Hand let in testimony prior to 1944——

[fol. 1460] Mr. A. Bloch: Judge Medina.

Mr. E. H. Bloch: Judge Medina, sustained by Judge Hand—on the theory that there was a change in the policy of the Communist Party from 1944 until a meeting that they held at some convention in 1945.

The Court: Let's cut this short. I think this: I think that you will avoid any problem if you just get to the conversation part, if there was any telephone talk with a Julius and what led to that, without this specific meeting here.

Mr. Saypol: That is all right, I am satisfied to do that.

Mr. E. H. Bloch: Excuse me. I just want to say—off the record.

(Discussion off the record.)

(The following in the hearing of the jury;)

By Mr. Saypol:

Q. Miss Bentley, referring to this occasion when you accompanied Mr. Golos to the vicinity of Knickerbocker Village and you saw him in conversation with a man. Do you recall that?

A. Yes.

Q. Can you describe the characteristics of that individual to whom Golos talked? What did he look like?

Mr. E. H. Bloch: Just one second, Miss Bentley. I object [fol. 1461] to the question upon the ground it is incompetent, irrelevant and immaterial, outside the four corners of the charges in this indictment. This relates to an alleged incident that occurred in 1942, I believe—Mr. Saypol, correct me if I am wrong; it is my recollection—and on general grounds as well as the specific ground of remoteness, I object to the question.

The Court: Well, what about the fact that it occurred in 1942, Mr. Saypol?

Mr. Saypol: Well, I am proceeding under the authority of the Dennis case.

The Court: I know that.

Can you connect it up with a link, up to the time of the alleged commencement of the conspiracy in 1944?

Mr. Saypol: There is testimony from this witness that these activities generally continued right along up until 1946 or '47.

The Court: I am going to sustain the objection as to that particular assertion.

Mr. Saypol: Well, then, if that is so, I will abandon that line of inquiry, if the Court please.

The Court: All right.

Mr. Saypol: Let me just make this added observation—— [fol. 1462] The Court: There has been testimony here of an admission within the interval of the conspiracy as charged in the indictment. There has been testimony by Mr. Elitcher that when he went down to the vicinity of 10 Monroe Street with Sobell, Sobell went to see Rosenberg, as he said, Sobell had told him and Sobell returned. Sobell had said to him that there was nothing for him to be concerned about—he was referring to the alleged surveillance by the FBI—and that Rosenberg said that he had received a call from Elizabeth Bentley.

Mr. Saypol: That's right.

[fol. 1463] The Court: That is the conversation which did occur during the period named in the indictment.

Mr. Saypol: That is right.

The Court: I say you have a perfect right to ask the witness about any conversations she may have had close to the time of the indictment, which would throw us some light on this statement, but this alleged description of 1942 is a different point.

Mr. Saypol: Well, the activity that I want to connect up with this testimony about Julius from Elitcher, and I think it came from another witness, too, is all around the same thing. I tell that to your Honor now.

The Court: Well, first ask about that conversation; you may ask about that conversation.

By Mr. Saypol:

Q. Subsequent to this occasion when you went to the vicinity of Greenwich Village with Golos and saw this man, did you have a telephone call from somebody who described himself as "Julius"?

A. Yes, I did.

Mr. E. H. Bloch: Wait. I object to the form of the question upon the ground it is leading. I also ask that the time be fixed.

The Court: All right, fix the time as best you recall.

[fol. 1464] Q. Can you tell us when you had a conversation such as I described?

A. Do you mean the first telephone conversation or the last?

Q. You can give us either. How long did they continue?

A. They continued up until almost November 1943, at intermittent intervals.

The Court: You mean with somebody who called himself "Julius"?

The Witness: That is correct.

The Court: When did they begin?

Mr. E. H. Bloch: Now——

The Court: Just a moment.

Mr. E. H. Bloch: I am sorry.

The Court: When did they begin?

The Witness: I would place it in the fall of 1942.

The Court: Now, do you want to say something, Mr. Bloch?

Mr. E. H. Bloch: Yes, I would like to move that the answer be stricken out upon the following grounds: first, that it is not within the four corners of the indictment; in the second place, no proper foundation has been laid, where this witness identified the voice as the voice of Julius Rosenberg, or any other present conditions.

[fol. 1465] The Court: She hasn't given the conversation yet.

Mr. E. H. Bloch: Yes, but Mr. Saypol, in the form of the question to which I have objected, has already gotten to the jury something about this.

The Court: All right, it will be for the jury to determine, not for you, nor for me, it will be for the jury to determine from all the evidence whether or not the "Julius" she is referring to is the defendant Julius Rosenberg on trial. The testimony is admissible, as I see it, because of the foundation which had been laid, or, shall I say, the previous testimony which came in from the lips of Elitcher, and I believe it is found on page 355 of the record, wherein he refers to a conversation with Sobell, in which Sobell says that Rosenberg said that he had some concern over his telephone call with Elizabeth Bentley; he didn't think that she knew who he was. It will be for the jury to infer, whether they want to infer, whether they want to give any weight whatsoever to this portion of the evidence, as to whether or not they will have to make a determination as to whether or not the Julius she spoke to in view of this previous testimony, is the defendant Julius Rosenberg.

Mr. E. H. Bloch: I understand your Honor's theory, [fol. 1466] and I don't agree with it. That is why I made my objection, because I think this evidence is not only incompetent for all the reasons I have suggested, but it again instroduces an element in the case which can only prejudice the defendants and take their minds off the main issues that they have to decide.

Mr. A. Bloch: My further objection is that her testimony, that somebody said to her he was Julius, is hearsay in and by itself and that should not be admitted.

Mr. Saypol: To supplement the record, may I make the observation, too, that the witness David Greenglass likewise referred in his testimony to a conversation with the defendant Rosenberg, regarding Elizabeth Bentley.

The Court: Well, that may be.

Mr. Saypol: Now, may I try to put it in two questions and get it over with?

The Court: Go ahead.

[fol. 1467] By Mr. Saypol:

Q. Subsequent to the occasion when you went to the vicinity of Knickerbocker Village with Mr. Golos and saw him in conversation with a person, and continuing until November 1943, did you have telephone calls from a person who described himself as Julius?

A. Yes, I did.

Mr. E. H. Bloch: Same objection, your Honor, of course.

The Court: Overruled.

Q. The answer is yes?

A. Yes.

Q. As a result of those telephone calls from the person describing himself as Julius, did you then have conversations with Golos regarding the telephone calls from the person describing himself as Julius?

A. That is correct.

Mr. E. H. Bloch: I would like the answer to be either yes or no, your Honor.

The Court: Just answer that yes or no.

Q. The answer is yes?

A. Yes. I think I said "That is correct." I am sorry.

Q. And thereafter, having conversed with Golos about the telephone call from Julius, in the first instance, would you immediately thereafter receive further telephone calls [fol. 1468] from the person describing himself as Julius?

A. Yes.

Mr. E. H. Bloch: Same objection, your Honor.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. As a result of these conversations with the person describing himself as Julius, and with Golos, did you learn to know what Julius's occupation was?

A. Yes.

Mr. E. H. Bloch: Now, if the Court please, I object to it. I object to it upon the ground that it is apparent from the testimony of this witness that she could not have personal knowledge, that on the face *ot if*, it appears that she hasn't personal knowledge, and therefore it is pure hearsay and not binding upon this defendant.

The Court: I am not going to sustain it on that ground but I am going to sustain the objection generally.

Mr. Saypol: May I be heard on that, if the Court please?

The Court: Yes.

Mr. Saypol: One, in ordinary normal activity as a human being, absorbs knowledge as a result of experiences, which I think is recognized as adequate to support the contention that there is knowledge. For instance, I stand here [fol. 1469] as a lawyer——

The Court: I know, I know. I don't need any argument on that. What you are saying is that intelligent people can form a conclusion based upon facts which they hear or see or so forth, and that they are entitled to form a conclusion, and I know very well that the Petrone case said you can give your conclusions from time to time, and that isn't the basis upon which I sustained the objection. I just think we have gone far enough with the subject and I think for the purposes of what the Government intended to introduce, they have introduced it.

Mr. Saypol: May I have one further question, if you will allow me? Then I will drop it.

The Court: Yes.

Q. From your conversations with Julius and with Golos, did you come to learn in what vicinity Julius resided?

A. Yes.

Mr. E. H. Bloch: I object to it, your Honor, upon the same grounds.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. Yes, he lived in Knickerbocker Village.

By the Court:

Q. Where is Knickerbocker Village? Do you know the [fol. 1470] vicinity?

A. I can get to it, on the lower East side, but I don't think I can describe how to get down there.

Q. Do you know whether it is any place close to the Journal-American building? Do you know where the Journal-American building is?

A. The Journal-American building is on the waterfront, isn't it, or am I wrong?

Q. Yes, that is right.

A. It is down past the Allen Street Public Markets, and down on in there. I know how to get down there, but I can't describe it to you because I don't know that part of town too well.

By Mr. Saypol:

Q. Do you remember the type of street, wide or narrow?

A. Narrow streets.

Q. The night that you went there?

A. Narrow streets and there are indoor public markets.

Mr. E. H. Bloch: Now, if the Court please, I assume that the Court sustained my objection with reference to this night that she was alleged to have gone there with Golos.

The Court: Yes, I did.

Mr. E. H. Bloch: And I think this is a continuation of something that has already been objected to and sustained. [fol. 1471] The Court: I sustained that.

Mr. Saypol: I was only following up the Court's question. I said I would ask but the single question, and I did.

The Court: All right.

By Mr. Saypol:

Q. Now, Miss Bentley, when for the first time did it come into the realm of public knowledge that you had been engaged in these espionage activities?

A. Well, unless it was someone who had some inside information, it must have been the end of July 1948, when I testified before a Senate Committee and a Congressional Committee.

Q. That was the first time that you made a public disclosure, as distinguished from your cooperation with the FBI, of these activities in which you had been engaged in behalf of the Communist Party and Soviet Russia?

A. That is correct, yes.

The Court: Might I say this: these conversations, that you referred to, with someone who called himself Julius, might I characterize the part that you played in those conversations, that you carried messages from this person called Julius to Golos, and back to Julius from Golos?

The Witness: My part was that I took messages from [fol. 1472] Julius to Golos and told Golos that he wanted to meet him, and so on. I was a go-between.

The Court: I see. Very well.

Mr. Saypol: I think that is all.

You may examine.

Mr. E. H. Bloch: Will you bear with me one moment, please?

Cross-examination.

By Mr. E. H. Bloch:

Q. Miss Bentley, when did you say you first went to the FBI?

A. In the latter part of August 1945.

Q. Where did you contact the FBI at that time?

A. In New Haven, Connecticut.

Q. Did you go to the FBI and inquire about a certain captain?

A. I went to the FBI to tell them my story.

Mr. E. H. Bloch: I move to strike out the answer—well, we had better wait.

The Court: I heard some of it. She had gone to the FBI herself. I have got a faculty of hearing a few things.

Mr. E. H. Bloch: In New Haven, Connecticut, and I asked her whether or not she inquired about a certain captain and she gave me an answer, your Honor, and I am moving to strike out the answer upon the ground that it is not responsive.

The Court: Well, the answer will stand, but you may [fol. 1473] press your question.

Q. Did you inquire of the FBI about a certain captain at that time?

A. Yes. In the course of telling them things I inquired about the captain, yes.

Q. And that captain was a friend of yours, was he not?

A. Yes, I think he was an acquaintance of mine.

Q. And you had met him before you went to the FBI?

A. Yes, I would say I had met him maybe three months before, something of the sort.

Q. He had taken you out socially?

A. Yes, rather, on and off, yes.

Q. Now, was there any particular reason why you asked about this captain——

Mr. E. H. Bloch: I withdraw that.

Q. Did you go down to the FBI for the purpose of disclosing your Communist Party activities?

A. Certainly.

Q. Was there any reason that you can assign to us why you inquired about this captain when you went down there for the purpose of disclosing your Communist Party activities?

A. Certainly. I was working with the Russian secret police; I was going with the FBI to work with them; I was being taken out socially by a man who told me he was doing undercover work for the United States Government. That made a very dangerous situation.

[fol. 1474] Q. And you had been engaged in dangerous situations for many years up to that time, had you not, Miss Bentley?

A. Naturally, and I always take precautions when I am in dangerous situations.

Q. Yes. You found yourself in a very dangerous situation in 1945?

A. No, I saw nothing dangerous in 1945.

Q. You did not. Even though you had been engaged in dangerous work for many, many years; isn't that right?

A. Probably no more dangerous than any other year.

Q. Well, you continued as an alleged member of the Communist Party after you disclosed certain information to the FBI in 1945; is that not the substance of your testimony?

Mr. Saypol: I object to the question as to form. There was nothing at all alleged about it. It was factual and accurate and actual.

Q. All right. You continued in fact as a member of the Communist Party until 1947; is that right?

A. Yes, I continued in contact with the Communist Party until 1947.

Q. And from the first time you went to the FBI in New Haven, in 1945, until some time in 1947, you continued your activities as a member of the Communist Party under the [fol. 1475] instructions of the FBI: is that not right?

A. I continued contacting the Communists, yes.

Q. Now, prior to 1945 you had many contacts, you say?

A. Quite correct.

Q. Whom you met; is that correct?

A. As I said, I think I had some 30-odd contacts, yes.

Q. Whom you met personally?

A. No, I didn't meet all of them personally.

Q. Well, how many of the 30 did you meet personally?

A. Well, I would have to sit down and figure it out for you. I don't know whether it was 20 or how many it was.

Q. Well, give us your rough estimate.

A. Roughly, I will say 20, but I can't bank on it because I would have to sit down and count noses on it.

Q. And would you say that those 20 whom you met personally were doing underground work?

A. They were doing espionage work, which is synonymous with underground work.

Q. And you were working with them, knowing full well that they were doing espionage work; isn't that correct?

A. I was doing espionage work myself.

Q. Have you ever been arrested for committing the crime of espionage or conspiracy to commit espionage?

[fol. 1476] A. No, I haven't.

Q. Have you ever been arrested for committing espionage or conspiring to commit espionage?

A. I am sorry, I just answered that question.

Q. Have you ever been indicted? There is a distinction, Miss Bentley, between an arrest and indictment, I am sorry.

A. No, I have not been indicted, nor have I been arrested for anything.

Q. And you have not pleaded guilty——

Mr. Saypol: Now, if the Court please——

The Court: You can't plead guilty without an arrest or indictment.

Mr. E. H. Bloch: You might sometimes voluntarily come in, your Honor.

The Court: No, you can't. You have got to have an indictment.

Q. You have never been convicted, have you——

Mr. Saypol: The witness has already answered, your Honor.

Q. —for the crime of espionage or conspiracy to commit espionage?

The Court: The answer is obvious. Let her answer.

Mr. Saypol: She has never been prosecuted. How can she be convicted?

[fol. 1477] A. No.

Q. And you have never been prosecuted for committing espionage or conspiracy to commit espionage, have you?

A. No.

Q. Now, you have referred to a man by the name of John Golos.

A. Jacob Golos.

Q. I am sorry. He was known to you also as John?

A. John was the name he used with his undercover contacts. His real name was Jacob Nathan Golos.

Q. And what name did he use to you?

A. Well, when I first met him for the first year, I first knew him as Timmy. After that I knew him by his real name.

Q. What name did you call him?

A. You mean personally?

Q. Yes.

A. I called him Yasha.

Q. You were pretty friendly with him, weren't you?

A. I think I have said this in other trials: I was in love with Mr. Golos.

Q. And you not only were in love with him but you lived with him, did you not?

A. Yes, I did and, as I have explained at each and every trial, that was a Communist——

Mr. E. H. Bloch: I move to strike out "at each and every trial," your Honor. I think I am entitled to a di-
[fol. 1478] rect answer.

The Court: Answer the question.

Q. You lived with him, did you not?

A. I lived with him in what was the Communist conception of marriage. The Communists didn't believe in bourgeois marriage.

Q. And you didn't believe in bourgeois marriage?

A. Since I was a Communist, I didn't.

Q. And you lived with him, did you not?

A. I certainly did.

Q. In the eyes of the American law you were not living with him as legal husband and wife; is that not correct?

Mr. Saypol: I don't think an expert like Mr. Bloch could answer that question, so I object.

The Court: And you can't generalize as "American law," because I understand there are some states that recognize common law marriages.

Q. Did you ever live with Mr. Golos outside of the State of New York?

A. I didn't live with Mr. Golos on the same premises, if that is what you are getting at.

Q. In New York?

A. No, I did not live on the same premises with him.

Q. But you had relations with him?

A. Yes, I have told you that once before.

Q. In New York?

A. In New York.

[fol. 1479] Q. And only in New York?

A. I haven't the slightest remembrance. I would have to go back and think through it.

Q. Well, will you kindly just think through it a little bit and tell us whether or not you lived with him any places outside of New York?

A. I don't think that is necessary.

The Court: No, no. We have had enough of this subject.

Q. Did you know that Golos was married at the time you started to have relations with him?

A. Mr. Golos was never legally married to any woman in his life. Any other women had the same relationship I had. He did not believe in bourgeois marriage. He was a Communist.

Q. Would you characterize your relationship with Mr. Golos as you being the mistress of Mr. Golos?

A. I don't feel I am called upon to characterize it. That is up to you.

Q. I am asking you now.

The Court: No, I am going to sustain the objection. I think she is giving you the facts. Characterization is unimportant.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: I think it would be a whole lot more appro-
[fol. 1480] priate if we got to the issues in the case. I think counsel has adequately made the point. I think throughout this trial the Court has been patient with counsel; has frequently suggested to counsel that cross-examination be cut off because of its extensive repetition, and I think on this subject it would be more advisable for counsel to proceed with the points in issue.

Mr. E. H. Bloch: I object to Mr. Saypol's statement. I think——

The Court: Don't take an objection on an objection. Let's go on. I have told you, go on.

Q. Did you know that Mr. Golos had a child when you started to have relations with him?

A. I knew that Mr. Golos had lived with a woman previously, who had gone back to the USSR two years before, and that he had had a child by her, yes.

Q. As a result of that union; is that correct?

A. As a result of their living together, or whatever it was.

Q. Now, Miss Bentley, were you a member of the Communist Party in 1927?

A. '27? No.

Q. So when you testified in response to one of Mr. Saypol's questions about an event in 1927, you didn't have any personal knowledge of it, did you?

[fol. 1481] Mr. Saypol: I object to that, if the Court please. The witness testified to something that was common knowledge to everybody and went back that far. She testified directly that she joined the party in 1935.

The Court: I understand.

Mr. E. H. Bloch: I have reference——

The Court: Why don't you address the question particularly and direct her mind to the particular subject matter?

Q. Do you remember testifying this morning about World Tourists?

A. Yes, certainly.

A. That is correct. You see, I ran World Tourists for a year and a half myself and I have seen the incorporation papers and all the records which prove that conclusion.

Q. And it is on that basis——

A. It is on the basis of my having seen direct documents and records when I was managing World Tourists for the American Communist Party that I say that.

Q. That is what I want to know.

A. That is correct.

Q. Did you recognize the voice of the man who you say called you up and said, "This is Julius"?

[fol. 1482] A. What do you mean recognize?

Q. Are you a college graduate?

A. Well, I mean——

The Court: I must say that is ambiguous, recognize; what do you mean?

Q. Do you recognize whose voice it was?

The Court: You didn't say that.

Mr. E. H. Bloch: I am sorry.

Q. Did you recognize whose voice it was who called you up and said——

The Witness: I don't understand, your Honor. I have heard the man over a telephone, that is all. I have heard no other voices. What does he mean?

Mr. Saypol: Just a moment. I object to the question as to form. It depends upon whether Mr. Bloch addresses himself to the first call from Julius or to subsequent calls. I hardly think——

The Court: No, no.

By the Court:

Q. Did you ever meet a person, did you ever meet anybody in person, whose voice you heard, and you can now say is the voice of the man who identified himself as Julius on the telephone?

A. No, I have never met anyone whose voice I heard, whom I could identify as Julius.

[fol. 1483] By Mr. E. H. Bloch:

Q. How many times in all do you say this person who called you up and said, "This is Julius"——

A. I would put it around—it might have been five or six; it may have been more.

Q. And during what period of time was this?

A. I think I have stated that. It was from the fall of '42 to about November of '43.

Q. Can you tell us more specifically when these calls came in?

A. Yes, they always came after midnight, in the wee small hours. I remember it because I got waked out of bed.

Q. You were living at that time in Mr. Golos's apartment?

A. I have just informed you, I think twice, that I did not live with Mr. Golos. I lived at 58 Barrow Street, by myself.

Q. When you say these calls came in in the wee hours of the morning, was that at Mr. Golos's house at which you received these calls?

A. I have just told you, the calls came to my house at 58 Barrow Street, Mr. Golos was living some other place.

Q. Was Mr. Golos with you at your house at 58 Barrow Street when these calls came in?

Mr. Saypol: Just a minute. Obviously, on my examination I couldn't pursue the subject beyond certain limits,

[fol. 1484] but I think it would be appropriate, and I ask the Court to advise the witness that in response to questions of counsel in this field there is latitude for her to describe the circumstances in which she received the calls and what she did about them. I couldn't pursue it. I intended to do it on redirect, if necessary, but to facilitate movement of the trial, I ask, if you will, if your Honor will not advise the witness to that effect.

The Court: I think if there is some additional statement that is necessary, where she hasn't amply explained something, I will tell her, if necessary, to go on.

Mr. E. H. Bloch: I wonder if the stenographer will read back the last?

The Court: The question was whether Mr. Golos was with you at 58 Barrow Street at the time when any of these calls came in.

A. Yes, on one occasion he was.

Q. And on that one occasion, did you answer the phone?

A. I always answered the phone.

Q. Did you always ask the people who called you their names?

A. If I didn't get the voice right off, but this particular party always started his conversation by saying "This is Julius."

[fol. 1485] Q. "This is Julius"?

A. Yes.

Q. That was on six or seven occasions?

A. I put it at five or six. It might be seven or eight. I don't know exactly the number of them.

Mr. E. H. Bloch: All right. Just pardon me, your Honor.

Q. Miss Bentley, have you written a book recently?

A. Yes, I have written a book.

Q. On what subject?

A. Well, the title may get changed again. I can't tell you exactly what the title is going to be yet.

Q. I didn't ask you about the title. I asked you on what subject?

A. The subject of how a person can become a Communist and how they can be disillusioned and get out again.

Q. You are describing in that book, in a sense, an autobiography?

A. I would say so, yes.

Q. And it deals with the subject of communism, does it not?

A. That is correct, yes.

Q. And has that book been published yet?

A. No, it has not been published.

Q. Have you completed your draft and submitted your draft to the publisher?

A. The draft has been completed. It has not yet been finally O. K.'ed as to what cuts are going to be made.

[fol. 1486] Q. But you have already submitted your final draft to the publisher, have you not?

A. No, there is no such thing as submitting a final draft until the publisher has gone over and made suggestions and cuts, and that is your final thing.

Q. But you have submitted, then, let's say, a tentative draft to the publisher?

A. I have submitted one that is too long and has to be cut and may have to have some more work done on it, yes.

Q. Did you receive any money from the publisher for that book?

A. I received an advance from the publisher, as many authors do, yes.

Q. How much?

A. Let's say——

Mr. Saypol: Is that relevant, if the Court please? I object to it.

The Court: Well, if he doesn't spend too much time on it, I am going to permit him to ask a few more questions, but if he is going to have prolonged questioning, I am going to cut it off.

Q. How much?

A. I received a $3,000. advance from my publisher.

Q. When?

A. Over a period of time. I can't give you exact dates. I would have to get the memoranda to show you.

Q. And under your contract with the publisher, are you [fol. 1487] not to receive more money from him?

A. I can't tell you the exact breakdown on it. When a book goes out and gets sold there is a certain division

of royalties between publisher and author, and it changes from time to time, when you sold more you get more, and so on, so I don't know.

Q. In other words, there is a royalty arrangement; is that right?

A. Yes—well, I understand that is common with everybody.

Q. I am not trying to accuse you of anything, Miss Bentley. I am asking the fact.

The Court: All right, don't get into an argument with her.

A. I didn't believe you were. I just thought you knew that.

Q. You have a royalty arrangement with your publisher, have you not?

A. Yes.

Q. And do you expect to make money out of the sale of that book?

A. I haven't the least idea.

Mr. Saypol: That ought to be obvious.

The Court: All right; is the subject exhausted now?

Mr. E. H. Bloch: Almost.

The Court: One more question?

Mr. E. H. Bloch: Yes.

[fol. 1487-A] The Court: Go ahead.

By Mr. E. H. Bloch:

Q. Have you also lectured on the subject of communism?

A. Yes, I have.

Q. And have you received fees for lecturing on communism?

A. Sometimes I do; sometimes I don't. It depends on the groups I address.

[fol. 1488] Q. Have you received fees for lecturing on Communists?

The Court: She said sometimes she does and sometimes she doesn't. There's your answer.

Mr. E. H. Bloch: With all due respect to your Honor, I submit that the answer was not responsive because I asked

her a very simple question. If she did, she has to say "Yes."

The Court: All right, the answer stands. There is your answer.

Q. All right. Now how many times have you received fees for lecturing on Communists?

A. I couldn't possibly tell you without going back over a two-year period and figure it out. I simply have no idea.

Q. Have you lectured extensively on communism within the last two years?

Mr. Saypol: How high is "extensively"? I object to that.

The Court: Yes, I do not understand that either.

Q. Have you lectured many times during the past two years on the subject of Communists?

Mr. Saypol: I dislike to interrupt—

The Court: Do you know what would be considered [fol. 1489] "many times," Miss Bentley?

The Witness: Frankly, I don't. I do not know the lecture field well enough to know.

Q. All right, how many times during the last two years have you lectured on communism?

A. I just told you that I can't possibly give you an answer unless I go back and look through all my engagements and add them up. I would have no idea.

Q. Now let us get your present recollection. Was it more than two times?

A. It is certainly more than two but I cannot be pinned down to an answer because I cannot stand behind it, I don't know.

Q. Was it more than five times?

A. It was certainly more than five times.

Q. Was it more than ten times?

A. I really don't see where this is getting us——

Mr. E. H. Bloch: I move to strike out the answer as not responsive.

The Court: Yes, I think she is absolutely right, and I think you have got enough of an answer there for the subject that you are after.

Mr. E. H. Bloch: I respectfully except——

The Court: Go ahead.

Mr. E. H. Bloch: —to your Honor's remarks, and may I say to the Court, so that there will be no misunderstanding [fol. 1490] of the purpose of this cross-examination that I am attempting to elicit from this witness the fact that she has something to gain financially——

The Court: You have done it.

Mr. E. H. Bloch: —from testifying.

The Court: You have tried, and I see your purpose, and it won't make any difference whether you get an answer now to ten times or an answer to fifteen times. The witness has stated she has written a book, she expects to get royalties, she has gotten an advance and generally has stated she is lecturing, she has been paid for it. Go ahead.

Mr. E. H. Bloch: I respectfully except to your limitation of my cross-examination on this subject.

The Court: I think I am giving you unusual latitude.

Q. Miss Bentley, how much in all have you received during the last two years from your lectures on communism?

Mr. Saypol: If she knows.

A. Again it is impossible to tell you. I don't carry figures in my head. I haven't the least idea.

Q. Do you have a bank account?

A. Yes, I have a bank account.

Q. And did you deposit the fees that you received for [fol. 1491] your lectures in your bank account?

A. Well, I have several bank accounts and deposit sometimes in the bank accounts; sometimes I cash it for other money, to go on to the next lecture trip.

Q. Can you give us even the roughest kind of an idea——

A. No, I cannot.

Q. —of how much money you have received from lectures on communism in the last two years?

A. I am sorry, I have told you before I do not know how many lectures and I have no idea on the amounts of money.

Mr. E. H. Bloch: Your Honor, will you bear with me again for one moment?

The Court: Go ahead.

(Mr. E. H. Bloch confers with associates.)

Q. Miss Bentley, how many drafts of your book did you submit to your publisher?

A. I don't think I had drafts. It is a question of adding chapters, reading them—I haven't the least idea of what you mean by "how many drafts."

Q. At any rate, you submitted various chapters of your book to the publisher, is that correct?

A. No, it wasn't done that way at all.

Q. Did you submit one chapter at a time?

A. No, it wasn't done that way at all. I was working in [fol. 1492] the country and whatever I had ready in rough form, he would take. Sometimes I maybe had two drafts; it depended.

Q. Did you, any of the written material that you sent to your publisher in connection with your autobiography dealing with your work in the Communist Party, ever write down anything about this telephone conversation that you related where somebody called up a few times asking for Mr. Golos and stating on the wire, "This is Julius"?

A. Yes.

Q. When?

A. I haven't the least idea when that particular part of the book was written, but that was put into the book very definitely. Whether it is still in or whether it has been cut out I don't know.

Q. I would like you, please, Miss Bentley, to test your recollection as best you can and tell us, if you can, the first time you say you submitted evidence of this telephone conversation that we are talking about to your publishers.

A. I haven't the least idea. I was dealing with a book haphazard. I can't tell you on that.

Q. Was it within the last year?

A. Let us see, the last year? It probably would have to have been within the last year because that is when I have been writing it down, probably, yes.

[fol. 1493] Q. Have you any copies of the drafts that you submitted to your publisher?

A. No, I don't believe I do. I think there is one tucked away in storage but I don't have any with me, no.

Q. Have you any written material in your possession now——

A. No.

Q. Wait a second; I haven't finished the question.

I am assuming you ought to have some written material. Have you any written material in your possession now from which you can show this Court and jury that you wrote down to your publisher about this telephone conversation?

A. I don't understand your question. I have just informed you I haven't it in my possession now. It is the same question you asked me before, isn't it?

Q. I just wanted to get an answer.

Mr. E. H. Bloch: That is all.

Redirect examination.

By Mr. Saypol:

Q. Miss Bentley, I take it that the material for your book was written in narrative form as you went along with your publisher and the material submitted to him, is that correct?

A. That is correct. But the reason it was hard for me to answer the previous question was that I didn't start the beginning and work forward; I started the middle and went [fol. 1494] backward and then forward, and wrote whichever way was the easiest.

Q. Incidentally, are you here pursuant to subpoena?

A. I am.

Q. Where were you yesterday morning at this time?

A. In San Juan, Puerto Rico.

Q. Did you fly here last night in order to give your testimony today, pursuant to that subpoena?

A. Yes, I did.

Q. Now, Mr. Bloch has asked you some questions about these telephone calls from Julius and the fact of their incorporation in your book. Do I understand correctly your purpose in including reference in that book was to illustrate the method of maintaining contacts between couriers and agents in this system?

Mr. E. H. Bloch: I object to the form of the question, your Honor, and I object to it upon the ground that it is not proper redirect.

The Court: Well, I am not accepting it for the purpose of establishing it as a fact, that that is the purpose, but I

am accepting it on the basis that it may establish that she did include it in her book.

Mr. E. H. Bloch: I respectfully except.

A. That was partly it. The other reason was to show the incredible things that Communists will go through in order to carry out their jobs because it meant that when I was [fol. 1495] called at 2 in the morning I often had to go out and go many blocks in the cold to get a pay telephone to call Mr. Golos.

Q. Do I understand from that that sometimes when you received calls of this type, whenever the occasion required it, you would in turn go immediately to a public telephone to get in touch with Mr. Golos?

A. That is correct. It was considered unsafe for me to call out of my own telephone.

Q. In other words——

The Court: All right, I think we have that purpose now.

Q. Now, Mr. Bloch has made reference in his examination of you to lectures by you. For what kind of groups have you lectured?

A. I have lectured for civic groups, the American Legion, for religious groups, for the Air Corps, the Navy and people of that sort.

Q. Mr. Bloch has made reference in his examination to the subject of your book and the subject of your lectures as relating to communism. It is not the fact that your subject matter relates to your experiences as a Soviet courier as it is connected with the Communist Party of America?

A. That's right.

Mr. E. H. Bloch: If the Court please, I object to the form of the question.

[fol. 1496] The Court: Overruled.

Mr. E. H. Bloch: I object to——

The Court: You asked her what the purpose of the book was.

Mr. E. H. Bloch: And she answered.

The Court: All right. He has a right on redirect to enlarge on the subject a bit.

Mr. E. H. Bloch: I respectfully except.

The Court: Go ahead.

Mr. Saypol: Mr. Reporter, will you be good enough to read that question?

(Record read.)

Q. And what you have described in these lectures and in your book is the connection between the Communist Party of America and its objective and activities in recruiting agents and in obtaining material for Soviet Russia?

A. That is correct.

Mr. E. H. Bloch: Now, if the Court please—I object to the question as to form, I object to it as to substance. I think it is incompetent, irrelevant and immaterial.

The Court: All right, we will have no more on the subject. I think she has characterized the book.

Mr. Saypol: That is all I want, is the answer to this question, and I am through.

[fol. 1497] The Court: No, we have already got it. She has characterized the book. We know generally what the purpose of the book was. I think you have enough on that subject.

Mr. Saypol: Will you bear with me for just one second?

The Court: Go ahead.

Mr. Saypol: I did not make reference in my prior question to the recruiting of agents.

The Court: I understand.

Mr. Saypol: That is why — wanted the answer to that question.

The Court: I consider that phase purely as a collateral matter, dealing with details.

Mr. Saypol: I think I put enough in. My adversary referred solely to the matter of communism and I wanted to show the real connection of the part of Miss Bentley.

Mr. E. H. Bloch: I would like to ask a few more questions and I am going to ask the Court to give me some latitude here because there was one subject—and it is not going to be long—which I forgot to cover in my cross. It was my mistake. It was an inadvertence on my part. I am going to promise the Court that I am not going to be long.

[fol. 1498] Recross-examination.

By Mr. E. H. Bloch:

Q. What——

The Court: Before you get into that, let me make sure that I have understood Miss Bentley's answers to what I consider the main issue and the main purpose of her testimony.

By the Court:

Q. You said, did you not, Miss Bentley, that you had knowledge of the instructions and the teachings of the Communist Party officials to the members of the Party?

A. Yes, that's right.

Q. And you had personal knowledge of that between the years of—what?

A. Personal knowledge between the years I was working with the Party, which would be between '35 and '47.

Q. Very well. Now, with particular reference to the instructions concerning help or aid to Russia, did I understand your testimony that the Communist party officials instructed the members of the Party orally and in writing, in a general way, to do everything possible to aid Russia?

A. That's correct, yes.

The Court: Very well.

By Mr. E. H. Bloch:

Q. Miss Bentley, what is the name of your publisher?

A. Devin Adair Company.

[fol. 1499] Q. Will you spell it?

A. D-e-v-i-n A-d-a-i-r.

Q. Where are they located?

A. 23 East 26th Street.

Q. 23 East 26th Street?

A. That's correct.

Q. Now Miss Bentley, what period did you say you went into this underground work? During what period did you go?

A. In 1938.

Q. Until when?

A. Well, I was in it until I finished in 1947. Actually in 1947 I stopped my contacts with the Communist underground.

Q. Now during that period did you attend any regular Communist Party meetings?

A. No, I didn't.

Q. So you do not know, do you, Miss Bentley as of your own knowledge what went on at any of those meetings, do you?

A. If you mean from '38 on, no.

Q. That's right. How many—suppose I ask you this: Were there what is commonly called branches in the Communist Party of the United States?

The Court: But she continued as a member of the Party.

Mr. E. H. Bloch: Yes.

The Witness: I continued as a member of the Party but I simply was not attached to branches. That is not the word that was used.

Q. What is the word?

[fol. 1500] Mr. Saypol: Give her a chance.

A. The word, in case you don't know, there were two kinds, shop units and street units. And street units were pretty generally called branches, at least in those days.

Q. Let us see; there were shop units and there were street units, is that right?

A. That is correct.

Q. And when you went in——

A. And there were some specialized units, too. There were trade units.

Q. But these were units—the common term was "units," is that right? I say, the common term that was applied——

A. Oh, I am sorry, I thought you said "the common term."

Q. The so-called groups were units?

A. That is the word that was pretty generally used in this country, yes.

Q. And that you would say was from 1938 to about the time that you got out, is that correct?

A. No, I said that was a system in the Communist Party

for people who were not too far underground—at least in the days that I was in.

Q. That is from 1938 to——

A. No, I went in in 1935.

Q. I beg your pardon, from 1935 until 1947.

A. That is right—yes, sometimes your underground [fol. 1501] people did go and meet groups. I handled one group in Washington that had unit meetings.

Q. But by and large, when groups of members of the Communist Party met, they met as a unit?

A. I can't give you specific figures on that. I don't know how many people were disconnected and how many people were attached to units. I don't know the figures on that.

Q. Did you know the number of units that were operating in New York City during any of the years, any of the years, from 1938—from 1935 to 1947?

A. I may have once but I don't remember it now.

Q. Could you tell us how many members there were of the Communist Party in any of the years——

A. Impossible to tell you.

Q. Wait—from 1935 to 1947.

A. I am sorry but I didn't work in the division of the Communist Party that kept track of statistics. I wouldn't have known that.

Q. Now let me ask you this question, Miss Bentley. Did the Communist Party of the United States have a constitution?

A. I think they drew up a so-called constitution at one point, yes.

Q. When you say "at one point" could you tell us what period that covered?

A. No, I am sorry. We didn't pay much attention to the [fol. 1502] constitution since again it was one of those paper affairs.

Mr. E. H. Bloch: I move to strike it out as not responsive.

The Court: No, I will let it stand.

Q. Did you ever see a constitution of the Communist Party of the United States while you were a member of the Communist Party?

A. That I don't remember. I may have——

Mr. Saypol: Wait. Will Mr. Bloch distinguish between Miss Bentley's open membership and the time she was in the underground?

Mr. E. H. Bloch: I mean at any time, yes.

We are not talking about a constitution of an organization——

The Court: You are going to finish up with this witness before lunch, aren't you?

Mr. E. H. Bloch: I am going to try to, your Honor.

The Court: All right.

Mr. E. H. Bloch: This is the part I missed upon cross, you see. That is why I have asked you to give me some latitude.

A. I can't tell whether I saw a constitution or not. I probably did but I don't recall it offhand.

Q. From 1935 to 1947 you say you never saw a constitu-[fol. 1503] tion?

A. You misquote me. I said I may have seen it. I don't recall now one way or the other. There was no reason actually why I probably should have seen it.

Q. Even from 1935 to 1938?

A. But why? It was only a paper document that no one lived up to.

Q. And you knew that in 1935 when you entered, that the constitution was just a paper document?

A. I don't think I was aware that they had a constitution in 1935; I don't know.

Q. Were you aware that that organization had a constitution in 1936?

A. I told you I haven't the least recollection of constitutions or what they were at all. I may have seen it or I may not; I don't know.

Q. Let me ask you this—try to refresh your recollection about any constitutions that you may have read.

A. I told you before and I can only repeat it, I may have seen it, I may have not. I can't place anything about it. There is no us*ing* asking me three or four times when I have already answered you.

Q. Is there anything else you want to say?

The Court: What is that? What is the question?

Mr. E. H. Bloch: I said "Is there anything else you want [fol. 1504] to say?" I do not know whether she has finished.

The Court: Now you do not want her to start and give you——

Mr. E. H. Bloch: All right.

The Court: —a voluntary statement, do you?

Mr. E. H. Bloch: No. I thought she was going to finish up with something else.

The Court: You have to be very careful about that kind of question, "Is there anything else you would like to say."

Mr. E. H. Bloch: I am not worried about what she is going to say. I think she has given her testimony here.

Will you bear with me one second (examining paper).

Q. Miss Bentley, you say you saw the FBI for the first time in 1945?

A. If you mean I went in and talked to them, yes.

Q. Talked to them about Communist activities, didn't you?

A. In August, 1945, yes. I told you that.

Q. And you have talked to them many, many times since, have you not?

A. A good many times, yes.

Q. When was the first time that you told the FBI about [fol. 1505] this telephone conversation—"This is Julius"—I do not want to go into all the details. You know what I am referring to?

A. I gave the entire story, including Julius and the telephone calls and all to the FBI when I went into them at various successive meetings. We couldn't get it all done at once. It would have been, I guess, in the fall of 1945, along in there.

Q. Did you give it to them in the fall of 1945 this specific telephone conversation?

A. It must have been because the basic material that I had to give to them was in that period, so it must have been included in there.

Q. And that was the first time you went down to see them?

A. No, it would be impossible to tell you.

The Court: She just answered. She said she couldn't give the whole story the first time but it was in successive periods around that time.

Q. How many times in all did you see the FBI in the fall of 1945?

A. I haven't the least idea.

Q. More than ten?

A. There is no use my trying to guess at all these things —more than five, more than ten. I haven't the least idea but it was quite frequently and I can't give you any closer answer than that.

Q. All right, we will take your answer if that is the best. [fol. 1506] And how many times in 1946—how many times did you see the FBI?

A. I couldn't possibly guess, but, again, very, very frequently.

Q. And how about 1947?

A. The same answer.

Q. And how about 1948?

A. The same answer.

Q. And how about 1949?

A. The same answer.

Q. And how about 1950?

A. The same answer.

Q. Have you ever been paid by the Government of the United States for any of the evidence that you have disclosed to it?

A. No.

Q. Not one penny?

A. No, not one penny.

Q. Do you do anything for a living outside of writing or lecturing now?

A. You mean at the present time?

Q. Yes.

A. I am taking a vacation right now.

Q. You came on from Puerto Rico?

A. That is correct.

Q. Well, prior to the time you went on vacation?

A. Certainly. I had a teaching position for one year, I lectured and I wrote a book.

Q. All right. Now have you—is this the first trial that you have testified with respect to——

A. This is the——

Q. —to any aspects of the work that you did in connection with communism?

A. Well, all three—this is the third trial; in all, three [fol. 1507] trials I have testified to my work in communism, yes.

Q. Did you testify in the trial of William Remington?

A. I did.

Q. And did you testify in the trial of Abe Brothman?

A. I did.

Q. Do you remember testifying at that trial that you succeeded a man—or you preceded a man by the name of Harry Gold?

A. I don't think I could possibly have testified that because I didn't know Harry Gold. I think what I did was describe the process by which I handed Abe Brothman over to another contact, who it seems to have turned out to be Harry Gold.

Q. Do you know whether Harry Gold was a Communist?

A. I am sorry, I don't know Mr. Gold. I didn't read his testimony or I wasn't in court when he testified. I know very little about him.

Q. Didn't you talk to Mr. Gold, Harry Gold?

A. I have never met him, I do not know anything about Harry Gold. I never met him. I never talked to Mr. Golos about him. I didn't know that he was existing.

The Court: And wasn't it generally the policy of those engaged in this kind of work not to talk very much about the [fol. 1508] others that are engaged in similar kind of work?

The Witness: That is correct. I would even doubt it seriously if Mr. Golos himself knew who Mr. Gold's identity was.

Mr. Saypol: I want to serve warning—just a moment, if your Honor please. I want your Honor to notice that I refrained entirely in my direct examination from this subject.

The Court: All right.

Mr. Saypol: But if counsel opens the door I will have to go entirely into the circumstances——

The Court: I think counsel is closing the door right now.

Mr. Saypol: Your Honor knows what I mean.

Mr. E. H. Bloch: Just one further question.

By Mr. E. H. Bloch:

Q. Didn't you testify in the Brothman trial that Harry Gold succeeded you as a courier to Brothman?

A. No, I did not because I didn't know of Harry Gold's existence. I simply testified how I made arrangements for him to be turned over to another contact. I didn't know who the contact was, what he looked like. I didn't have the least idea about it.

Q. Did you mention the name Harry Gold in the Brothman trial?

A. If somebody asked me if I knew Harry Gold I pre- [fol. 1509] sumably answered back I did not know Harry Gold.

Q. Now in addition to testifying in these three trials—this is the third, is that correct?

A. This is the third, that is correct.

Q. —have you also testified before various Congressional Committees?

A. Yes.

Q. How many?

A. Oh, good heavens, I don't know. Let me see. One, two—oh, four or five, roughly.

Q. Before the House Un-American Activities Committee?

A. That is correct.

Q. On at least two occasions?

A. Well, if you me-n two occasions—I was down there once for three weeks—do you count that as one occasion?

[fol. 1510] Q. You mean testifying for three weeks or preparing yourself for your testimony?

A. Off an- on——

Q. I say, testifying for three weeks or preparing yourself for your testimony?

A. Testifying off and on.

Q. And did you testify before any other House Committee?

A. Yes. I don't know the title of it. I think it is Immigration and Naturalization. Senator McCarren is the head of it.

Q. Were you——

Mr. E. H. Bloch: Withdrawn.

This is just the last two questions, your Honor. I am aware that everybody is hungry and I assume you want me to finish this—I can see that.

Q. Now Miss Bentley, did you follow the indictment in the trial of the leaders of the Communist Party here recently?

A. Not very closely, no. I think it was going on when I was out of New York and it wasn't in the papers too much where I was traveling.

Q. When you say "out of New York," were you in the United States at the time?

A. I was in the United States.

Q. Where?

A. Oh, heavens, I don't know when the trial took place [fol. 1511] even. If you will tell me when it took place I will tell you where I was.

The Court: Well, you have answered the question.

Q. Did you testify at that trial?

A. No, I did not.

Mr. E. H. Bloch: That is all.

Mr. Saypol: May I ask the last question and the last answer be stricken as irrelevant? I do not see what inference can be drawn from them.

The Court: I will strike that.

Mr. E. H. Bloch: If the Court pleases, before you strike that, may I just state the reason for asking it? It may be—I am not going to make an assurance to the Court but it may be in the course of my cogitation and cerebration in connection with introduction of evidence of my defense, I might introduce the indictment of the Communist leaders and also parts of the record to indicate that this witness did not testify because the theory upon which that case was tried, taken in conjunction with this witness's testimony, might have some bearing upon her——

The Court: You know very well that I won't permit it.

Mr. E. H. Bloch: If you tell me——

The Court: You know very well it is outside the scope [fol. 1512] of the issue in this case. You know very well that I will not permit any such thing to happen here.

Mr. E. H. Bloch: On the question of——

The Court: And furthermore this is as good a time as any to tell the jury, so that there is no confusion whatsoever as to the purpose for which this testimony was taken, that it is not to establish the guilt here of the crime charged because any of them might have been members of the Communist Party, but it is to show a link, as the Government contends, exists between aiding Russia, which is an element required by the indictment, by the statute and mentioned in the indictment, and being members of the Communist Party, just as if being a member of the Democratic Party or the Republican Party or being a member of the Elks Club or the Masons would furnish a link or give a motive or prove intent of any of the elements necessary in the statu-e and set forth in the indictment, and that is the only purpose for which it is taken, and you are not to determine the guilt or innocence of any of these defendants because you think they are communists. That is not what they are charged with here.

Mr. E. H. Bloch: If the Court pleases, in reference to the [fol. 1513] last question which your Honor struck, may I say and make it as clear as I can to the Court that the only reason I would think of introducing that kind of testimony is to impeach the credibility of this witness and not because I thought the issues of that trial have any relationship whatever to the issues in this trial.

The Court: Yes, but when I think that under the guise of impeaching the credibility of a witness you are dragging in not only the kitchen sink but the kitchen tub as well, I am going to stop it.

Mr. E. H. Bloch: Well, if the Court please, that is why judges and lawyers often disagree because we think differently, with different counsel. That is what makes a trial interesting, your Honor.

Mr. Saypol: Well, if everybody's hunger will await for about two minutes I will finish with the witness. Will your Honor allow me?

The Court: Go ahead.

Mr. Saypol: I am hungry, too, if the Court please.

Redirect examination.

By Mr. Saypol:

Q. Miss Bentley, Mr. Bloch asked you about Abraham Brothman. Was he one of the members of the Communist Party who supplied you as a currier with industrial information for transmission to Soviet Russia?

[fol. 1514] A. Yes, he was.

Q. Mr. Bloch asked you about William W. Remington. Was he one of the members of the Communist Party who supplied you with information from Government sources for transmission to Soviet Russia?

A. Yes, he was.

Q. Mr. Bloch asked you some question about a Constitution. Is it not the fact that your meetings with people like Brothman and Moskowitz were held at odd places at night, deserted places?

A. Correct.

Q. And those meetings usually were brief?

A. Yes.

Q. They took only a short time?

A. As short as possible, yes, sir.

Q. Was it part of your ritual to carry a Constitution in your pocket when you went to get information from these people at these meetings?

A. No, certainly not.

Q. Is it not a fact that the Constitution was intended as a foil for the open party and was not considered at all in the underground?

Mr. E. H. Bloch: That is objected to.

The Court: I will sustain that.

Q. Was any consideration at all given to the Constitution [fol. 1515] in the underground?

Mr. E. H. Bloch: That is objected to.

The Court: We have it.

Q. In your activities?

Mr. E. H. Bloch: That is repetitious.

The Court: I agree.

Mr. Saypol: On that ground then, I desist, and I wish to thank you, Miss Bentley.

The Court: I take it that is all.

(No response from defense counsel.)

The Court: All right, Miss Bentley, you are excused.

(Witness excused.)

The Court: We will recess for lunch until 2.30—and I hope we all have a good lunch. I think we will need it.

(Recess to 2.30 p. m.)

[fol. 1516] Afternoon Session

James S. Huggins, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. Mr. Huggins, where do you reside?

A. Laredo, Texas.

Q. Did you come up to New York this morning pursuant to subpoena from Laredo, Texas?

A. Yes, sir.

Q. What is your occupation, Mr. Huggins?

A. Immigration inspector, Immigration and Naturalization Service.

The Court: We can't hear you.

The Witness: I am an Immigration inspector in the Immigration and Naturalization Service.

Q. Did you produce pursuant to that subpoena certain original records of the Immigration and Naturalization Department of the Government concerning one Morton Sobell?

A. Yes, sir.

Mr. Kilsheimer: I ask that this be marked Exhibit 25-A for identification, your Honor.

(Marked Government's Exhibit 25-A for identification.)

Q. I show you Government's Exhibit 25-A for identification and ask you if that is the record which you produced pursuant to this subpoena?

A. It is.

[fol. 1517] Q. Is this a record which is kept in the regular course of the business of the Immigration and Naturalization Service of the United States Government?

A. Yes, sir.

Q. And is it in the regular course of business that this record is made?

A. It is.

By the Court:

Q. Was the record made at or about the time that the events recorded on that record transpired?

A. Yes, sir.

By Mr. Kilsheimer:

Q. Is this your signature on the back of this card, Mr. Huggins (handing)?

A. Yes, sir.

Q. There is another signature appearing on this card. Whose signature is that?

A. That is the signature of the man of whom this record was made.

Q. That man's name is——

A. Morton Sobell, I believe.

Mr. Kilsheimer: At this point, your Honor, the Government renews its offer of this exhibit in evidence, and if your Honor will receive it we ask that there be substituted therefor the authenticated copy which we had yesterday, 25 for identification (handing to Mr. Phillips).

Mr. Phillips: (After looking at tendered exhibit) May I ask a few questions, if your Honor please?

[fol. 1518] The Court: Go ahead.

By Mr. Phillips:

Q. The script part of this card is in your handwriting, is that right?

A. It is.

Q. You were at the time in Laredo, Texas, is that right?

A. Yes, sir.

Q. And Morton Sobell was there at the same time, is that right?

A. That is right.

Q. And did you speak with him or did you speak with other people?

A. I spoke with him.

Q. The information furnished to you on the face of the card on which the name Morton Sobell was written: was that information furnished to you by Mr. Sobell (handing)?

A. Right.

Q. At the same time were there any persons from Mexico there, from the state of Mexico?

A. Yes, sir.

Q. And those persons were in an official capacity?

A. Yes, sir.

Q. How many such persons were there?

Mr. Kilsheimer: If your Honor please, I believe this is cross-examination and does not go to the question of the admissibility of this document.

The Court: No.

Mr. Phillips: It is laying a foundation. If your Honor [fol. 1519] please, it is laying a foundation for an objection to some parts of this card.

The Court: Why don't you get right to the point without the preliminary questions, Mr. Phillips? Ask him who those people were and whether anything reported on there is what these people told him.

Mr. Phillips: I am coming to that. I wasn't there and therefore I don't know exactly who were there. I am getting it from this witness.

The Court: I know you weren't there; neither were any of us there except your client and so let us find out about this.

Q. How many officials from Mexico were there?

A. Roughly I would say—I don't remember exactly, but I would think there were about nine.

Q. And they told you some of the matter that is contained in this card, is that right?

A. They didn't tell me anything that is contained on there. No, they didn't tell me anything that is contained on that card.

Q. I direct your attention to the script at the bottom of the face of the card which does not contain Sobell's signature. Do you notice those words?

A. Yes.

Q. Just read them.

A. Yes, sir.

[fol. 1520] Q. That is in your handwriting as well?

A. That is right.

Q. Is it a fact that the information furnished to you contained in those words was furnished to you by the Mexican authorities, is that right?

A. No, sir.

Q. Well, you didn't speak to the Mexican authorities at all?

A. Yes, sir.

Q. Well, didn't you speak about Sobell to the Mexican authorities?

The Court: All right, now, you are getting into cross-examination.

By the Court:

Q. Now, where did that information come from that counsel has just referred to?

A. That is something I put on there myself from observation.

Q. That you made?

A. That I made.

Q. Is that something that is customary for you as an Immigration inspector to do?

—. That is right.

Q. In cases of similar character?

A. Yes, sir.

Q. Is it part of your duty to do that?

A. It is.

Q. Do you usually do that in the regular course of your business?

A. I do.

By Mr. Phillips:

Q. I still ask whether the information contained in those [fol. 1521] words was given to you by the Mexican authorities or the Mexican police or whatever they were?

A. I don't remember that it was. In fact, I would say that it was not.

Q. Well, you were not in Mexico at the time when Sobell was there?

The Court: All right, now we are getting into cross-examination. You repeat your objection. I think we have enough now. We have laid a foundation now for the introduction of the record itself. Now anything else reserve for your cross-examination proper.

Mr. Phillips: Won't you allow me one or two more questions?

The Court: All right, one or two more. Go ahead.

By Mr. Phillips:

Q. It is true that you were not in Mexico; isn't that right?

A. That is right.

Q. So the first contact you had with Sobell was in Texas; is that right?

A. Correct.

Q. You therefore do not know of your own knowledge what occurred in Mexico?

A. Naturally.

Q. And any information on this card as to what occurred in Mexico was imparted to you by the Mexican authorities; is that correct?

[fol. 1522] The Court: The witness said no, it was based on his own information.

A. I said that the notation at the bottom, which I placed on there, was through an observation of my own; that all the data that is contained on that was furnished by Mr. Sobell.

Q. All the data above that?

A. All the data before those three words that you were referring to there.

Mr. Phillips: I object to the introduction of this card, except that part of it, the face of it, which is signed by Sobell, but the other part is entirely inadmissible.

The Court: Let me see it.

Mr. Kuntz: Particularly that portion, if your Honor pleases, if I may interject, with your Honor's permission, particularly the portion that the witness now testified he put down there as his own observation.

The Court: It is perfectly all right, if it is part of his duties to do so, that goes to the weight of the evidence; if it is part of his duties to do so and it is made in the regular course of business and it is part of his regular course of business to do that, it is admissible under the statute.

Mr. Phillips: If your Honor pleases, I am not question-[fol. 1523] ing this man's execution of his duty. I am not criticizing him at all.

The Court: What you are talking about now goes simply to the question of weight. Now, you have made an objection to the admissibility; in connection with that your objection is not a good one.

You had better give me a copy I can read. I can't read the handwriting there.

(After reading) Your objection is overruled. The document is admitted.

Mr. Phillips: Before your Honor rules finally, may we come to the bench so that I can give you some additional thought in my mind?

The Court: No, I know the subject matter thoroughly; nothing further.

(Government's Exhibit 25-A for identification received in evidence.)

The Court: Now, have you any objection to the substitution of the copy for the original?

Mr. Phillips: No, let the original be here, if your Honor please. I prefer it.

The Court: All right, the original will be here. Mr. Kuntz, is there a difference of opinion there?

Mr. Kuntz: I personally don't see any purpose, but I [fol. 1524] bow to the superior wisdom of my colleague.

The Court: All right, keep the original available, but the copy will be considered as marked without objection.

Do I understand that it is a copy of the original?

Mr. Kuntz: No objection on that score.

The Court: It will be received with the same force and effect as if the original had been marked.

Mr. Kilsheimer: Concerning the original document, will it be acceptable if we substitute a photostatic copy of the original, so that the witness can take this back with him?

Mr. Phillips: The photostat is O. K.

The Court: All right, so that will be marked 25, the photostat will be marked 25, and the copy which you made will be marked 25-A.

Mr. Kilsheimer: This copy, the authenticated copy, had been marked Exhibit 25 for identification yesterday.

The Court: It will now be received in evidence.

Mr. Kilsheimer: Yes, sir.

Mr. Phillips: Does your Honor understand and is it [fol. 1525] understood that my objection went to the reverse side of the card, not the part on which Sobell's signature exists?

The Court: That is correct.

Mr. Phillips: Because I don't want to seem captious.

The Court: I overruled your objection and admitted the entire document, because each and every part of it was made in the regular course of business.

Mr. Phillips: I said I didn't want to be misunderstood, that is all.

Mr. Kilsheimer: Before I read parts of this to the jury, may I examine the witness a little further from the card?

The Court: Go ahead.

By Mr. Kilsheimer:

Q. By whom was the defendant Sobell brought into your office at Laredo, Texas?

A. He was brought there by the Mexican Security Police.

Q. Were there any agents of the United States present in your office when Sobell was there?

A. There were.

Q. Did they do anything with Sobell in your presence?

A. No, sir.

Q. Did they place him under arrest?

[fol. 1526] A. Not until—when I was through making the manifest records, he left the office; they took him in custody and left the office with him.

Mr. Kilsheimer: I would like to read portions of this card to the jury.

The Court: All right.

Mr. Kilsheimer: This card is marked "A manifest, the port of Laredo, Texas," and it is dated August 18, 1950. The family name is Sobell; the given name is Morton; accompanied by wife, Helen L. Sobell. His place of birth is New York City; age, 33; last permanent residence, 164-17 73, Flushing, Queens, New York. Ever in U. S.? It has "all life until about two months ago." At the bottom of the card is a notation "Deported from Mexico." On the reverse side of the card, that is, under Remarks and endorsements, "Sworn before manifesting. Brought to Immigration office by Mexican police." The card is signed on the lower lefthand corner by Morton Sobell and on the righthand side by the witness, J. S. Huggins.

May I exhibit that to the jury?

The Court: Anything further?

Mr. Kilsheimer: I have no further questions, your Honor.

[fol. 1527] Mr. Huggins: Could I have a copy?

The Court: Will you give him a copy, or hand that back.

(Original exhibit handed to Mr. Kuntz by a juror.)

Cross-examination.

By Mr. Kuntz:

Q. Mr. Huggins, I see that this card, Government's Exhibit 25-A, is partly typewritten and partly in longhand, is that correct?

A. That's right.

Q. And I presume that the handwritten part is in your handwriting?

A. It is.

Q. Now when was the typewritten part put in?

A. It was all put on there during the presence of Mr. Morton in the Immigration Office.

Q. Now, did you get the information——

A. Mr. Sobell, I meant to say, instead of "Mr. Morton."

Q. Did you get the information contained in the typewritten part from Sobell or from records that were given to you by the FBI agents?

A. The information that I placed on there, with the exception of the part "deported from Mexico" was furnished by Mr. Sobell, that is, the——

Q. I would like——

The Court: Go ahead; what were you going to say?

[fol. 1528] Mr. Kuntz: I am sorry.

A. (Continuing) That is, the date and place of birth, his marital status, his occupation, his last residence in the United States and when he was last in the United States—that was all furnished by Mr. Sobell.

Q. Now what I want to know is, did you typewrite it yourself?

A. I typewrite it—typewrote it myself.

Q. Now I notice that on Government's Exhibit 25-A you have typewritten "Morton Sobell," is that correct?

A. That's right; that is according to instructions.

Q. And then to the right of that I notice that you have "Accompanied by wife" written out in your handwriting.

A. That is right.

Q. Now does that refresh your recollection, or let me put it this way, isn't it a fact, Mr. Huggins that the typewritten part "Morton Sobell," or "Sobell, Morton" was already prepared and that when you spoke to Sobell and he told you he was accompanied by his wife, that you wrote in your handwriting "Accompanied by wife"?

A. No, sir.

The Court: You mean "No, sir" it did not happen or——

The Witness: I mean that it was not already prepared. I believe that is the way I understood him.

[fol. 1529] Q. All right, I will take that as an answer. I notice also that on the next line the name "Helen L. Sobell" appeared in your handwriting; is that correct?

A. That's right.

Q. Now then, I see on the next line that "New York City,

N. Y." was typewritten—I had better get closer to you, if you don't mind (moving nearer to the witness box).

It was typewritten (indicating)?

A. That is right, yes, sir.

Q. And that the very next item, "Age, 33" was written by you?

A. Yes, sir.

Q. That was your handwriting?

A. Yes, sir.

Q. And "Sex, M," written by you?

A. By me.

Q. Is that right?

A. Yes, sir.

Q. And then I see, "Occupation, Elec"—E-l-e-c—"E-n-g-r."—I presume it stands for electrical engineer—that is typewritten, isn't that right?

A. That's right.

Q. Now you say that you were at the typewriter and getting the information from Sobell and as he was giving it to you you typed, I suppose?

A. Yes, sir.

Q. And I presume you are about like myself, one of the two fingered operators?

A. That's right.

Q. And will you tell this jury what occasioned you to stop the typewriting, pick up your pen and put in the word [fol. 1530] "wife" instead of typing that out?

A. I didn't know it. Mr. Sobell's wife was not present during that time.

Q. No, no, wait a second, Mr. Huggins: I do not want to mislead you.

The Court: Go ahead, answer the question.

A. His wife was not present. I didn't know that she was out there after that—after that manifest—after the part that is typed on there, the rest of it was completed, I still maintain the rest of it was completed during the presence in the office of Mr. Sobell.

Q. I didn't question you on that. I just wanted to find out this: I see on the top of this card some red stamps, "Laredo, Texas, August 18, 1950". I presume you picked

up a stamp, put it on the stamp pad and stamped those two items on there, is that right?

A. That's right.

Q. You had Sobell right there, didn't you, with you?

A. Yes, sir.

Q. And you, so far as you were concerned, you were a stranger to this matter.

Mr. Saypol: He wasn't very much of a stranger. He was doing his duty as an official of the United States.

Mr. Kuntz: I think the witness understood my question.

[fol. 1531] Mr. Saypol: Presumably someone——

Mr. Kuntz: Or if you don't just say so.

Q. You were a stranger to the Sobell matter, weren't you?

Mr. Saypol: No. I object to the question as to form.

The Court: Did you know Sobell before?

The Witness: I never had seen Mr. Sobell before, no, sir.

Q. Did you know anything about Sobell's coming there?

A. I had read in the papers, certainly.

Q. Read in the papers where?

A. The Sobell case. In fact we had——

Q. When was that?

A. We had a lookout on him to prevent his departure from the United States.

Q. That is just exactly what I wanted to get at. If I had known you were going to give it to me that way I wouldn't have wasted a lot of time. You were expecting him, weren't you?

A. Yes, sir.

Q. Now on the basis of your expecting him, will you tell this jury whether it wasn't a fact that the typewritten part of this card was prepared before Sobell came into your office?

The Witness: Gentlemen of the Jury, it was not prepared prior to the time that Mr. Sobell——

[fol. 1532] The Court: Don't forget the "ladies".

The Witness: I beg your pardon, ladies and gentlemen, prior to the time that Mr. Sobell came into the office, no part of it was prepared, prior to the time that he came into the office.

Q. Then am I to understand or are we to understand that as you got the information from Mr. Sobell you two-fingered yourself on the typewriter and filled out the typewritten portion, is that right?

The Court: He said that about six or seven times.

Q. I ask you again, when you finished typing the name on, "Sobell, Morton" did you then pick up your pen and ask him who he was accompanied by?

A. I don't remember when I did.

Q. But you do notice that the handwritten part says "Accompanied by wife"?

A. That was information that he gave me during the time that he was in my office.

Q. Now then I take it that your answers would be similar in regard to all the other typewritten portions and the other handwritten portions, is that correct?

A. Will you repeat your question, please?

Mr. Kuntz: Will you please read it?

(Question read.)

[fol. 1533] The Court: By that you mean that it was all given to him in the presence of Sobell whether it was handwritten or typewritten?

The Witness: Right.

Q. Now, I understood you to say, Mr. Huggins, that you knew about this matter from having read it in the newspapers?

The Court: He says he knew about the name.

Q. Yes. About the Sobell matter by reading it in the newspapers, is that correct?

A. I will say that we had a lookout on him prior to the time that he came into the office.

Q. Do you know whether any FBI men went into Mexico as part of this lookout?

Mr. Kilsheimer: I object to that, your Honor.

The Court: I will overrule it.

A. I don't know whether they did or not.

Q. Did you speak to any of the FBI men?

A. I did.

Q. Did you ascertain from speaking with them that any of them had gone into Mexico?

A. I didn't.

Q. Did you hear any of the FBI men say that they had gone into Mexico?

Mr. Kilsheimer: I object to that.

The Court: I will have to sustain that. We are getting very far afield.

[fol. 1534] Mr. Kuntz: I respectfully except.

Q. Did you ask Sobell before you wrote down those words "Deported from Mexico" whether he was deported from Mexico? Did you, yes or no?

A. I don't remember that I did. May I make one statement, though?

The Court: Yes.

Mr. Kuntz: No, no. I suggest——

The Witness: Prior to the time that this manifest was prepared it was explained to Mr. Sobell that our regulations required that any person who is being deported from Mexico, there be a record made and that I would like for him to furnish me with the necessary information.

The Court: Very well.

By Mr. Kuntz:

Q. Before you made this observation on this card, "Deported from Mexico," did you ask any of the Mexican security police or the Mexican authorities to exhibit any document to you regarding the deportation of Sobell from Mexico?

A. I did not.

Q. Did any of those Mexican police or other Mexican officials, whether you asked them or not, did they exhibit to you any document showing that Sobell had been deported?

A. No document, no.

[fol. 1535] Q. By the way, I notice that Sobell's name is on here in pencil.

A. I believe you will notice that it is indelible pencil.

Q. I don't know one pencil from another. I just want to know whether it is in pencil.

The Court: Does that make any difference?
The Witness: It is an indelible pencil, I believe.

Q. Did you give him the pencil to write with?
A. I believe I did, probably.
Q. Well, you had your pen with you then, didn't you?
A. I am not in the habit of handing people my pen to write with.
Q. This man Sobell was in custody; he wasn't walking out of that place, was he? Your pen wouldn't walk with him, would it?
A. Not likely, no.

Mr. Kuntz: All right. Thank you very much.

The Court: Is that all?
Mr. Kuntz: That is all.
The Court: (Addressing witness) You may go back to Texas.
Mr. Saypol: The Government rests, if the Court please.
The Court: The Government rests.
Mr. E. H. Bloch: If the Court please, there are certain [fol. 1536] motions I believe the defense wants to address to the Court. I don't know what the Court's idea is——
The Court: I want them very brief.
Mr. E. H. Bloch: Whether you want them outside the presence of the jury.
The Court: Yes, and very brief. I don't want any extensive argument.
Mr. E. H. Bloch: I can be brief as far as the motions I am going to make are concerned.
The Court: (Addressing jury) You may be excused for a few minutes.

(Jury excused.)

(The following took place in the absence of the jury.)

Motion for Mistrial and Withdrawal of a Juror and Denial Thereof

Mr. E. H. Bloch: If the Court please, the first motion I would like to make is a motion for a mistrial and the withdrawal of a juror upon the ground that there has been intro-

duced in evidence here on the Government's direct case testimony attempting to link up the defendants Rosenberg with membership in the Communist Party of the United States, and that testimony was admitted for the purpose of showing that rationale or causal connection between membership in the Communist Party of the United States and the crime alleged in the indictment so as to make it admissible and establish motive or intent. And it is my conten- [fol. 1537] tion, your Honor, that no such proof of a proper or adequate character has been introduced to establish that nexus or causal or rationale relationship and that this testimony that is now in the record and has been heard by the jury is improper. It has had the effect of confusing the issues; that it is matter of an inflammatory nature and it has resulted in incurable prejudice to the defendants Rosenberg and because of the fact that even if the Court would entertain a motion to strike out that testimony I don't believe that the vice could be cured.

Now that is my first motion.

The Court: Well I will rule on that one. That motion is denied. As I said to the jury this morning when the testimony came in, and I do believe there was other testimony in the record also, aside from the testimony of Miss Bentley, testimony from Elitcher, testimony from Mr. Greenglass, testimony from Greenglass himself, concerning which inferences could have been drawn as to the connection between Communism and the particular offense charged in the indictment.

I thought I made it clear to the jury this morning that the testimony was admitted just as I would admit testimony involving the Republican Party, the Democratic Party, the Masons or the Elks, if there were something about member- [fol. 1538] ship in that party which would prove one of the elements of the offense in this case.

Now what you are doing in effect is arguing as I see it in the reverse; that is, that because a person might be a member of the Communist Party they are entitled to certain immunities which they wouldn't have if they were a member of some other party that didn't quite carry with it the alleged stigma that being a member of the Communist Party does today. And for that reason you say even though there

is some connection or relevancy to the case it should be barred because of that fact and I don't go along with that at all. I don't agree that the connection has not been shown. I will submit it to the jury also for their consideration ultimately to determine whether the connection has been shown. And I deny your motion for a mistrial.

Mr. E. H. Bloch: If the Court please, just this one sentence to make my position clear on this: My whole argument is buttressed upon my belief that there hasn't been sufficient proof to show that causal connection.

The Court: All right.

Mr. E. H. Bloch: Now, my second motion——

The Court: In other words, you say if it had been shown [fol. 1539] it was relevant.

Mr. E. H. Bloch: I don't want to say that in so many words. I am taking the record as it is and my mind is working——

The Court: All right.

Mr. E. H. Bloch: —along a certain line of law.

Motion for Mistrial and Denial Thereof

My second motion, your Honor, without repeating everything that I said here with respect to membership in the Communist Party is with reference to the testimony concerning the Young Communist League, and upon the very same grounds urged in my first motion I now make a motion for a mistrial because of the introduction of that evidence.

The Court: I don't remember that there was any evidence concerning your clients about that. I think it was about Sobell in the Young Communist League.

Mr. E. H. Bloch: I think there was some testimony respecting Ethel Rosenberg. That is my recollection.

The Court: Young Communist League?

Mr. E. H. Bloch: Yes.

The Court: At any rate, whatever instructions I may have made or given at the time still stands and I will deny your motion.

[fol. 1540] Mr. E. H. Bloch: I respectfully except, your Honor.

Motion to Strike and Denial Thereof

My third motion, your Honor, is to strike out from the record all testimony of any witness relating to the subject of the alleged membership of the defendants Rosenberg in the Communist Party of the United States of America.

The Court: I will deny your motion to strike out.

Mr. E. H. Bloch: And the same motion to strike upon the same grounds urged with respect to the Young Communist League.

The Court: Denied.

Mr. E. H. Bloch: Now then, your Honor——

The Court: It is denied, but I don't remember what my original ruling was on the matter of the Young Communist League, but my recollection is that I limited the witness to the Communist Party.

Mr. E. H. Bloch: I think that is what your Honor meant to do, but I think Mr. Saypol represented to you that he would show causal connection, and I think Miss Bentley in response to one of the questions attempted to show that.

The Court: All right. At any rate, that is not of great importance. The important thing is the Communist Party. [fol. 1541] Mr. E. H. Bloch: All right.

Motions to Dismiss Indictment and Denial Thereof

If the Court please, I now move to dismiss the indictment as against the defendants Julius Rosenberg and Ethel Rosenberg upon the ground that the statute upon which the indictment is founded——

The Court: Well, are you repeating——

Mr. E. H. Bloch: I am not going to repeat all the ground. I just want to get the formal verbiage in.

(Continuing) As framed is unconstitutional, as violative of the rights guaranteed to these defendants under the First and the Fifth Amendments; upon all the grounds that I have heretofore urged to the Court in support of my argument when I made a motion to dismiss at the commencement of this trial, and I don't want to repeat all those arguments because the Court has already heard them, but I would like to state for the record that I would like to reallege them as though I am stating them now.

The Court: All right. Motion denied.

Mr. E. H. Bloch: I respectfully except.

And I now move to dismiss the indictment upon the ground that the indictment is defective and invalid because of the defective pleading. You remember——

The Court: You made that.

[fol. 1541a] Mr. E. H. Bloch: It was the constitutional ground which was also made at the commencement of the trial, and I would like to reiterate all the arguments in support of this motion as though I am stating them in full now.

The Court: Motion denied.

Mr. E. H. Bloch: I respectfully except.

The Court: Very well.

[fol. 1542] Mr. Phillips: If your Honor pleases, on behalf of the defendant Sobell, I join in the motions made by Mr. Bloch as though they were made by me, de novo, as it were.

Likewise, on the grounds raised at the opening of the trial, in which I thought I succeeded, but anyhow, I endeavored to point out to your Honor that the statute on which the indictment is based is void, as violative of the First Amendment of the Constitution, of the Fifth and possibly also of the Sixth; that the indictment itself, on the assumption that the statute is not unconstitutional, is so worded as to not come within—as not coming within the requirements of Rule 7 of the Federal Rules of Criminal Procedure. The indictment is so vague, purely generic in the terms in which the indictment is couched; no specific acts of any kind are alleged in the indictment against Sobell, and is so worded as not to safeguard the defendant against double jeopardy, and the testimony in this case, which I will advert to in a moment bears out, illustrates, the very point I made at the beginning of the trial.

The Court: Do you want me to rule on that motion, or have you got some more to say about it.

Mr. Phillips: I have got some more to say.

Therefore, if your Honor pleases, in this case, the only [fol. 1543] instances of any character in which Sobell is mentioned at all is by the witness Elitcher, and assuming for the sake of argument that every word that Elitcher uttered is the truth, we find what? Some time in the early 1940s, and continuing on for a number of years, Sobell,

together with Rosenberg—the word I should use is—importuned Mr. Elitcher, they solicited Mr. Elitcher, almost as though they were looking to win over a recalcitrant mistress to their side, begging of him to assist in furnishing information; that those acts of theirs met with failure. Elitcher at no time joined them, and that is all, that is all that Sobell is charged with having done.

Clearly, this is not the trial that we are in. The offense in this case is not the conversations——

The Court: I don't agree with you.

Mr. Phillips: Just a moment.

The Court: The offense in this case——

Mr. Phillips: I do hope——

The Court: Just a moment, Mr. Phillips.

Mr. Phillips: Yes.

The Court: The offense in this case is that they would, not that they did—this is a conspiracy—that they would get secret information pertaining to national defense and [fol. 1544] transport it or transmit it to the USSR, to its advantage. Now, is it not a link in this chain, is it not a part of this conspiracy that they will try to get recruits to get them secret information?

Mr. Phillips: I am meeting that challenge. It is conceivable, is it not, that Sobell and Rosenberg may be in one conspiracy and Sobell may be in another conspiracy without Rosenberg being present at all, or Rosenberg may be in a conspiracy without Sobell being in it.

The Court: Anything is conceivable. That is not the charge, though.

Mr. Phillips: That is conceivable. Now, I maintain, the proof in this case, assuming every word to be correct and truthful, is just that, that in one conspiracy, which is not the conspiracy we are trying—and I am coming to that, and I am accepting the challenge, and I am not going to prove——

The Court: That is not so. Don't enlarge on it, because I got your point and I think I understand this law of conspiracy, having tried these cases for the Government as a prosecutor, having sat in a number of these trials as a Judge, I think I understand the subject matter of conspiracy pretty well. This is one general conspiracy, but

[fol. 1545] there may be several branches to this tree; this is one trunk and there may be several branches, branching out from this tree, all emanating from this same tree, and the tree is to get this secret information. Some were trying to get the atomic bomb secrets; others were trying to get something else.

Mr. Phillips: One was trying to get the atomic bomb; the other one was trying to get something else. Those are two offenses, but they are through with that. Just a minute. The one that was trying to get the atomic bomb is connected with the atomic bomb, but not the other one. If that is so——

The Court: Just a moment, just a moment. Remember this: You are overlooking a very important thing, and that is that the defendant who was trying to get the atomic bomb secrets was also acquainted with, worked with the defendant Sobell.

Mr. Phillips: If that were the testimony——

The Court: It is the testimony of Elitcher.

Mr. Phillips: Just a moment. If that were the testimony, that he was working with the defendant Sobell to secure information on the atomic bomb——

The Court: No, other information.

Mr. Phillips: I want to make my point.

The Court: Other information.

Mr. Phillips: That is just what I am talking about. If [fol. 1546] he was engaged with the defendant Sobell in securing other information, as to which, we will say, it is an offense, for the sake of the argument, we will say it is an offense, and that is a certain offense, they were two together, cooperating each with the other, having, let's say, all of the elements of a conspiracy to get certain information from Elitcher. That is the testimony. That was abortive. Elitcher paid no attention to them; nothing happened.

The Court: He did pay a lot of attention to them.

Mr. Phillips: When I say "pay attention"——

The Court: But he was very recalcitrant.

Mr. Phillips: But the word "attention"—I should perhaps be more specific in my remark, he listened to them but he did not attend to the siren voices of these tempters—would that be correct?

The Court: Well, he certainly spent a lot of time with them.

Mr. Phillips: He spent an awful lot of time, as many people spend time with a siren voice of a temptress, but don't yield.

The Court: When he was accompanied by your client and went to Rosenberg's home to deliver the informa-[fol. 1547] tion.

Mr. Phillips: Precisely, as to Elitcher's specialty; all of it goes to Elitcher's specialty, which was in Navy projectiles.

Mr. Kuntz: Elitcher didn't testify that he brought anything. He had a can.

Mr. Phillips: Elitcher did not testify that Sobell brought anything in relation to the thing we are trying. Now, that is the point I am trying to get at. I say what was proven here are two conspiracies, one in which Rosenberg and Sobell—at least I am saying what was proven, you understand what I mean by that, it was attempted to be proven, and I claim that is exactly the point of the indictment, that is where the indictment is bad, because in the same indictment it is possible to get a lot of people on the charge of conspiracy, when one conspiracy is meant, and still another conspiracy is meant, and all the conspiracies are tied together, and that is what happened exactly here.

The proof, as formulated by the prosecution—and that is what I meant when I told the jury I was going to sit by, "I don't know what we are here for"——

The Court: So you found out, did you not?

Mr. Philips: Well, I found it out. I anticipated that the [fol. 1548] worst would be Elitcher's testimony, and I anticipated the worst will be that they are trying to show that Rosenberg was such a great friend of Sobell and both of them were trying to get recruits. Well and good, if we tried that case we would have an entirely different trial here, but all of a sudden we find that the real case goes to Gold, to Fuchs, to—what is that fellow's name?—Greenglass, Mrs. Greenglass.

The Court: Don't tell me you forgot his name.

Mr. Phillips: Wait a minute. And Sobell is nowhere

around; Sobell is attending to his duties like every good citizen should.

Now then, I ask you is it not true, therefore, is it not time therefore, that what we are talking about are two distinct conspiracies, on the assumption that all the testimony is true, that in one conspiracy Sobell, Rosenberg and Elitcher are more or less involved? That failed. Then we have another conspiracy which went to Los Alamos, which went to Albuquerque and elsewhere, and that is the big thing.

The Court: What you are saying in effect, Mr. Phillips, is that because the Government established with tremendous strength that branch of this common conspiracy, which dealt with the acquisition of the atomic bomb information, that because that portion of the proof was overwhelming, that therefore the Government hasn't got a right to charge [fol. 1549] and bring to trial in one indictment defendants, where they contend that it is part of one conspiracy, that the defendants will conspire to obtain secret information, secret information—not atomic bomb information only—but secret information, pertaining to national defense; transmit it to Russia or an agent of Russia, intending it to be to the advantage of Russia. You say "No, that can't be done" simply because they may have spent a good portion of their case proving how one branch of this conspiracy was so successful.

Mr. Phillips: The trouble with the statement is that I do not admit the word "overwhelming," as used by the Court; nor do I think the Court has made up its mind that the testimony is overwhelming, nor that other word of a similar character—I don't remember what is was exactly—"strong."

The Court: Well, let's put it this way: if I determine that I believe the witnesses for the Government, I think you will agree with me that it is rather overwhelming.

Mr. Phillips: I still don't believe that. I think they made out a very poor case but that is not the point. That is their business, not mine. My business is simple: the statement or the version of my argument that your Honor just gave is not the version that I am trying to bring across to the [fol. 1550] bench.

The Court: I get your point. You are saying in effect——

Mr. Phillips: Just a minute.

The Court: You are saying in effect that two conspiracies were proven, whereas only one conspiracy is charged.

Mr. Phillips: If anything.

The Court: And therefore——

Mr. Phillips: If you will now say that the over-all, namely, that two people meeting for the purpose of securing information to transfer to the Soviet Union, and then one of them goes somewhere unknown to the other, in Albuquerque, to secure different material, not anything they talked about at all, different material, of an entirely different character, of an entirely different branch of the Government defense or—what is that word?—national defense—that therefore once one man has spoken to the other man and said, "It would be a good thing if we would give information to Russia; Russia needs it; she has been treated shabbily," that once that conversation took place, then each one is responsible for the acts of the other, no matter how far out of that original conversation the thing took place.

The Court: Well, let me answer that. I am not going to [fol. 1551] say that your own characterization of it is correct, because I don't remember every step that you took in framing your question, but supposing—and there is a classic example that has been given—that A and B get together in New Jersey and they say they don't like this courthouse and it should be burned; and B comes over here; they both agree that it should be burned down; and B comes over to New York and he is standing in front of this courthouse and he sees a friend of his, C, and C says, "What are you doing here"? He says, "I don't like this courthouse. I think it should be burned down."

Mr. Phillips: A lot of people agree with him.

The Court: C says, "It is a good idea. We need some kerosene," and he walks down the street, and he walks away from B, and he meets a friend of his, D, and D doesn't know B; and D doesn't know A; he only knows C; and D says, "What are you doing?" He says, "I am trying to get some kerosene." He said, "Come on, I will take you to a store where you can get it; you can get some kerosene. What do you need it for?" He said, "I need it because I

want to burn down a federal courthouse." Now, getting kerosene by itself is a perfectly lawful act, but getting kerosene for the purpose of burning down a court house is an [fol. 1552] unlawful act.

Mr. Phillips: O.K.

The Court: Now, you can see in this case that every one of them are in a conspiracy, because they all have knowledge of the ultimate unlawful objective. Many of them don't know each other.

Mr. Phillips: Well, your analogy or your discussion at this moment might be analogous to this case: A and B together want to burn this court house. Then they meet C. C says, "That is a good idea." C then gets inflammable material and burns the Supreme Court building next door; is there a conspiracy between A, B and C to burn the Supreme Court building?

The Court: But unfortunately, the trouble with your example is that the conspiracy was not to send confidential information to England or to France, but it was to Russia.

Mr. Phillips: It doesn't make a bit of difference.

The Court: Oh, I don't agree with you.

Mr. Phillips: Under the statu-e, you must agree.

The Court: You just left out a very important element. They have agreed to get this very important information and send it to Russia.

[fol. 1553] Mr. Phillips: Just a moment. You must agree that it makes not a bit of difference under the statu-e and under the indictment, if it was Russia or Montenegro.

The Court: We are talking about this conspiracy, this one; we are talking of whether it is important to this one, and to this one it is important, to this one it is.

Otherwise you may have several conspiracies, but in this one it is important because they charge that it is information for the USSR.

[fol. 1554] Mr. Phillips: Information for the USSR.

The Court: Right.

Mr. Phillips: But the information on which they both join to go to the USSR, that information was abortive, it was over with.

The Court: Well, I am sure——

Mr. Phillips: Well, as long as you understand the point

I am making, I do not want you to decide without quite grasping the think I am saying, and I am saying it, as you know, without any preparations in advance because that has been gleaned from the nature of the trial and the testimony as it came along.

The Court: I take it no preparation except three weeks of it.

Mr. Phillips: I beg pardon?

The Court:: I say, no preparation except the three weeks that you have been sitting here and thinking about it.

Mr. Phillips: But it is only as a result of this trial. I did not know exactly what would be coming.

The Court: All right, Mr. Phillips.

Mr. Phillips: And I say that it is a spontaneous statement that I made to your Honor.

The Court: I appreciate your argument and I don't agree with you and I deny your motion.

[fol. 1555] Mr. Phillips: I respectfully except, if your Honor please.

Mr. E. H. Bloch: If the Court please——

Mr. Phillips: Just a moment.

(Mr. Phillips confers with associates.)

Mr. Phillips: I was going to wait until Rosenberg's attorney had made any further motions but Mr. Kuntz draws my attention to the fact that we have some other motions and he thinks I might as well do it now.

The Court: Go ahead. Make them brief, please.

Mr. Phillips: I will ask your Honor please to strike out all testimony on the subject of Communist affiliations or activities from this case.

The Court: Well, may I consider then, Mr. Kuntz, the same motion that was made——

Mr. Kuntz: Yes, Judge.

The Court: —with respect to Rosenberg's on this subject, applies to Sobell, and I deny your application.

Mr. Phillips: I do not think he quite made it that way.

Mr. Kuntz: I had that on my list but he could have skipped it because the record took care of it.

The Court: All right.

Mr. Phillips: Yes. Now if your Honor please, on behalf

[fol. 1556] of Mr. Sobell I ask your Honor to strike out all the testimony of David Greenglass and his wife, Mrs. Ruth Greenglass, of Harry Gold, of Dorothy Abel, of Louis Abel, of Dr. Koski, of Col. John Lansdale, Jr., of Lan Adomian, of the State Department record as to Yakovlev, and all exhibits relating to the atomic bomb or atomic energy weapon, and also the exhibit relating to the reproduction of the Jello box, and all exhibits and the testimony from Mexico, on the ground that no basis for this evidence has been laid—the record as well of Hilton Hotel, Albuquerque, New Mexico, and the record of the bank account of Mrs. Greenglass, and also the testimony of Dr. George Bernharft.

The Court: That is denied.

Mr. Kuntz: On the ground that they are not binding on the defendant Sobell.

Mr. Phillips: On the ground that they are not binding on the defendant Sobell.

The Court. I will give, at the proper time, the jury the instruction on the matter of law as to what is binding on each other.

Mr. Phillips: In denying this motion your Honor is denying it as to each one of them?

The Court: That is correct.

Mr. Phillips: Because I made a motion and it is possible [fol. 1557] that you may deny as to some and grant as to others.

The Court: As to each one.

Mr. Phillips: I respectfully except. At this time may I ask your Honor to call for the exhibits, the three indictments in this case, and the affidavit of Government agent, Rex I. Shroeder, verified August 2, 1950. If I am wrong on the date of the verification, I will ask your Honor to disregard it. I may be mistaken as to the date, so that they can be referred to hereafter in the course of the trial. They were marked for identification, I believe, with the exception of the affidavit of Shroeder—that wasn't marked at all, neither for identification nor in evidence. And if your Honor will have those documents available as the Court's exhibits, so as not to bind either of the defendants or the Government on it, I think it would be appreciated.

The Court: I do not understand it; what indictment?

Mr. Kuntz: There are three indictments, the original indictment, the superseding indictment——

Mr. Saypol: They are asking your Honor to act as process server.

The Court: That is something you are entitled to get from the clerk.

[fol. 1558] Mr. Kuntz: If your Honor please, I am sure Mr. Saypol knows we are not asking your Honor to act as a process server, to act as anything but what you are.

The Court: All right, I don't take offense. The two indictments you can get; just ask the clerk for them, the two previous indictments.

Now what is the other one? What is this about Shroeder or Shrader?

Mr. Phillips: Oh, I must explain to your Honor. This man was taken into custody——

The Court: Which man—Shroeder?

Mr. Phillips: My client—on the affidavit of Shroeder, not on an indictment——

The Court: Oh, you want the complaint that was filed.

Mr. Phillips: Oh, you call it the complaint; I call that the affidavit.

The Court: Down in the Commissioner's office.

Mr. Phillips: That is what I have reference to.

Mr. Saypol: It is a filed document.

Mr. Phillips: All right, if we can have those as well as the filed document, then my request is superfluous. I am not very often in this court.

The Court: Mr. Phillips——

Mr. Phillips: Yes.

[fol. 1559] The Court: You send your assistant, Mr. Kuntz, to the Clerk's office and he will get a copy of the indictments, a copy of the complaint as it is filed, or if he talks to Mr.——

(Clerk confers with the Court off the record.)

The Court: I know that. The complaint is down in the Commissioner's office and that is where you will get it.

Mr. Phillips: I made up my mind, if your Honor please, the next twenty-five years I am going to spend in this courthouse.

The Court: That would be a good idea. It is a good courthouse.

Mr. A. Bloch: Now, if your Honor please, to complete the record and to serve the rights of the defendants, I move to dismiss the indictment on the ground that the Government has failed to prove the charge contained in the indictment beyond a reasonable doubt.

The Court: Denied.

Mr. Phillips: By the way, we failed to make that statement in that way. I think it is a proper motion to make.

The Court: "Well, that refers to you too. Denied. Now all the motions are made. We will take our mid-afternoon recess at this point.

[fol. 1559-a] (Short recess.)

Mr. E. H. Bloch: If the Court please, my first witness is the defendant Julius Rosenberg.

The Court: Very well.

[fol. 1560] Julius Rosenberg, one of the defendants, called as a witness in behalf of defendants, being first duly sworn, testified as follows:

Direct examination.

Mr. E. H. Bloch:

Q. Now, Mr. Rosenberg, please keep your voice up. Don't make the same mistake some of the witnesses made and lower it as you go along.

What is your full name?

A. Julius Rosenberg.

Q. And how old are you?

A. 33.

Q. Where were you born?

A. I was born in New York City.

Q. And were you educated here in New York City?

A. Yes, I was.

Q. Will you tell the Court and jury the schools that you attended.

A. I attended Public School 88 on the Lower East Side

in Manhattan, and then I attended Public School 96, a junior high school. At the same time that I attended public school I attended Hebrew School, the Downtown Talmud Torah, Manhattan. I then attended Seward Park High School in Manhattan until 1934. While I attended Seward Park High School I attended Hebrew High School on East Broadway, New York.

I entered the School of Technology of the College of the City of New York in June, 1934, and I attained my degree [fol. 1561] of a Bachelor of Electrical Engineering in February of 1939.

Q. Now, are you single or are you married?

A. I am married.

Q. To whom are you married?

A. I am married to Ethel Rosenberg.

Q. Now, is she the lady who was sitting next to you at the counsel table and is sitting right now here?

A. Yes, sir.

Q. When did you marry Ethel Rosenberg?

A. June 18, 1939.

Q. And as a result of that marriage did you have any children?

A. Yes.

Q. What are the names of those children?

A. The oldest boy's name is Michael Allen Rosenberg.

Q. How old is he?

A. He is eight years old. And the youngest, his name is Robert Harry Rosenberg.

Q. And how old is he?

A. Four years old.

Q. Now, do you remember the date of your arrest?

A. Yes, I do.

Q. When were you arrested and taken into custody by the United States authorities?

A. I was arrested on July 16th.

Q. What year?

A. 1950.

Q. Now, up to the time of your arrest did you reside with [fol. 1562] your wife and two children at a residence here in New York City?

A. Yes, I did.

Q. Where did you live?

A. I lived at 10 Monroe Street, called Knickerbocker Village.

Q. Is 10 Monroe Street one of the various buildings in a development known as Knickerbocker Village?

A. That is correct, it is.

Q. Now when did you move into Knickerbocker Village at 10 Monroe Street?

A. In the Spring of 1942, we rented an apartment in Knickerbocker Village.

Q. When you say "we," you mean you and your wife?

A. Yes, sir.

Q. How much rental did you pay for that apartment at the time you moved in?

A. $45.75 per month.

Q. And how many rooms were there in that apartment?

A. Three rooms and a bathroom.

Q. Was there a living room?

A. Yes, sir.

Q. And was there a bedroom?

A. Yes, sir.

Q. And was there a kitchen?

A. Yes, sir.

Q. And a bathroom?

A. That is correct.

Q. Now, was your rent any different from the rental that you originally paid in 1942 during the course of your occupancy of that apartment?

A. Yes.

Q. Up to 1950?

A. Yes, sir.

Q. And was it raised?

A. It was.

[fol. 1563] Q. And what was the rental when it was raised?

A. $47.

Q. And was it raised again?

A. Yes.

Q. And what was the rental after it was raised the second time?

A. $51.

Q. And was that the rental you were paying for that apartment for yourself and your family at the time of your arrest in August of 1950?

A. That is correct.

Q. Now, Mr. Rosenberg, when you moved into that apartment in 1942, did you purchase any furniture for that apartment?

A. No, sir, I did not.

Q. Was the apartment furnished at the time you moved into it?

A. No, it was not.

Q. Did you procure furniture from somebody?

A. Yes, I did.

Q. From whom did you procure furniture and tell us the circumstances, please?

A. I had met a friend of mine at the union, the Federation of Architects and Engineers, and he was breaking up his home to go to California for a job and he was contemplating placing his furniture in storage, and I told him that I had just been granted a lease to Knickerbocker Village, and he said perhaps it would be best—"I would let you use my furniture and I would save the storage money and you would have the use of the furniture."

[fol. 1564] Q. And did you take his furniture and put it into your apartment at 10 Monroe Street?

A. That I did.

Q. And was that furniture second-hand furniture?

A. Yes, it was.

Q. Now, from time to time during the course of your living with your family at that apartment, did you have occasion to purchase new furniture?

A. Only once did I purchase a new item.

Q. What item was that?

A. A console table.

Q. And when did you purchase that?

A. I would say it was either in 1944 or 1945.

Q. And from where did you purchase that console table?

A. From R. H. Macy & Company.

Q. And how much did you pay for that console table?

A. It was somewhere about $21.

Q. Didn't you also purchase a breakfront?

A. No, I didn't purchase a breakfront; the breakfront you are referring to I was given by a person I met at Jefferson Travis Radio. The circumstances were that this man who was vice-president of that company had designed this breakfront and it wasn't made according to his specifications and could not fit into his home, and he asked me if I would please take the breakfront off his hands for the cost of transportation.

Q. And how much was that cost of transportation?

[fol. 1565] A. $5.

Q. Now, outside of those two items, the console table and the breakfront, did you purchase any other furniture for your home during this eight-year period from 1942 to 1950?

A. I purchased a few second-hand items from some resident of Knickerbocker Village. I would like to explain, please: There was a newspaper called the Knickerbocker Village News. The tenants would advertise certain items they wanted to get rid of, and at one time or another we purchased a second-hand piano.

Q. How much did you pay for that second-hand piano?

A. $25.

Q. What other items?

A. A chest of drawers.

Q. How much did you pay for that?

A. $20.

Q. What else?

A. Two small chests for the childrens' room.

Q. And how much did you pay for those?

A. $5. apiece.

Q. Now, have you now told us practically all the furniture that you purchased for your home during the years 1942 to 1950?

A. To the best of my recollection I have.

Q. Now, Mr. Rosenberg, when you were graduated from the College of the City of New York with your engineering degree, did you obtain employment anyplace?

A. I had odd jobs during the year 1939.

Q. Can you remember any or all of the employers for [fol. 1566] whom you worked during that period?

A. I worked for a man by the name of Paul Williams during that period.

Q. And what did you do for him?

A. I did some research for him on an invention that he was trying to perfect.

Q. And can you recollect any of the names of any of the other employers for whom you worked during that period?

A. I worked for E. B. Bliss & Company, in Brooklyn.

Q. In what capacity?

A. As a tool designer.

Q. Can you remember any of the other employers?

Mr. Saypol: Would Mr. Bloch be good enough to fix the times?

Mr. E. H. Bloch: I think he said 1939.

The Court: All right.

Mr. E. H. Bloch: Isn't that correct, your Honor, that we are up to 1939?

The Witness: That is right. I can't recollect.

Q. Now, after you had completed these odd jobs or the employment in these odd jobs, did you get a position on a permanent basis?

A. Before that my wife secured a position in Washington, D. C., and I had been on a series of Government lists for a job.

By The Court:

Q. When did she get her job in Washington?

[fol. 1567] A. In 1940.

Q. What branch?

A. The Census Bureau.

By Mr. E. H. Bloch:

Q. That is your wife now?

A. Right. And I went down to Washington with my wife in the summer of 1940 to see if I could secure any position off these Government lists.

Q. Let me understand you; prior to the time that you went down to Washington had you made application to the Federal Government for a number of jobs?

A. Yes. I took exams.

Q. After you went down to Washington were you successful in obtaining a position from the United States Government?

A. Yes, I was.

Q. What position did you obtain?

A. I was appointed from the junior engineer list to a job as junior engineer with the Signal Corps in New York.

Q. How long in all did you live in Washington from the time you first got down there sometime in the summer of 1940 to the time you came back here in New York to start performance of your duties under the job that you got from the government?

A. About two months.

Q. Did your wife remain in Washington after you left?

A. Yes, she did.

Q. Did she follow you after you got back to New York?

[fol. 1568] A. A couple of months after she left Washington and came to live with me in New York.

Q. Now, when your wife came back to New York did you take an apartment with her together?

A. No, we did not.

Q. Where did you live?

A. We lived at my mother's house on Goerck Street, New York City.

Q. How long did you live there?

A. About six months.

Q. And after that did you move someplace else with your wife in New York City?

A. Yes, we did.

Q. Where did you move?

A. We moved to a furnished room on Avenue A, near 7th Street.

Q. And how long did you live there with your wife?

A. A little over a year.

The Court: What year was that?

The Witness: That was in the year 1941.

Q. And where did you live from 1941 until you moved into Knickerbocker Village in 1942?

Q. At that apartment I am just talking about.

A. Now, when did you commence working for the United States Government in New York City? I think you said for the Signal Corps?

A. That is correct.

Q. When?

The Court: The Signal Corps of the Army?

[fol. 1569] Q. The Signal Corps of the Army, is that correct?

A. That is correct. I don't remember the exact date, but it was in 1940 the end of the summer.

Q. And how long did you continue working for the United States Government?

A. Up until February, 1945.

Q. Now, were you then separated from your job with the United States Government?

A. I was.

Q. Did you then procure another position?

A. Yes, I did.

Q. Now, I will go back just one second, if I may; During your service with the United States Government from 1940 to 1945, did you always have the same position?

A. No, I did not.

Q. Well, will you describe to us how many positions you had while you were working for the United States Government?

A. I started my employment as a junior engineer in the late summer of 1940 at $2000. per annum. In about one and a half years I was promoted to assistant engineer at $2600. per annum. A year and a half after that I secured a promotion to associate engineer at $3200. per annum, and I received certain ingrade raises, so that my salary at the time of my severance from the Government was approximately $3600. per annum.

[fol. 1570] Q. Now then, we come to the time that you say you procured another position. With whom did you secure this next position?

A. I secured a position with the Emerson Radio Company of New York.

The Court: That is February 1945?

The Witness: Late February '45.

Q. Now, had you been working at the plant of the Emerson Radio Company here in New York while you were still working for the United States Government?

A. Yes. That was one of the firms I was stationed at.

Q. And how long did you continue working for the Emerson Radio Corporation?

A. Up until the end of 1945, December.

Q. And what were your earnings during the period that you worked for the Emerson Company in 1945?

A. My starting salary was $70. per week. I received an increase to $77. a week, including the overtime work which was usual—I averaged approximately $100. per week.

Q. Now did there come a time when there was a curtailment of the staff at Emerson and you were laid off?

A. That is right.

Q. And did that occur in December 1945?

A. That's right, sir.

Q. Now, after you no longer were employed with the [fol. 1571] Emerson Radio Corporation were you employed by anybody else subsequently?

A. No, sir.

Q. What did you do for a livelihood?

A. Before my termination of employment with Emerson Radio, when there were signs that the staff would be curtailed, I got together with my brother-in-law, Bernard Greenglass, and a neighbor at Knickerbocker Village by the name of Isidore Goldstein, and we formed a partnership.

Q. And what was the trade name or firm name under which that partnership conducted business?

A. The United Purchasers & Distributors.

Q. And did you have an office when you started—did you have an office with the United when you started business with these two partners?

A. We used a store of my father-in-law's shop at 64 Sheriff Street as our office.

Q. Now, how long did you continue——

The Court: And did the witness state what his business was?

Mr. E. H. Bloch: Oh, surely—I am sorry, your Honor.

Q. What was the business of this United—what was the full name, please?

A. United Purchasers & Distributors.

Q. What was the business in which they engaged?

[fol. 1572] A. Buying and selling surplus products.

Q. When you say "surplus," were there any special kind of products?

A. Mostly in the hardware line.

Q. In the what?

A. In the hardware line.

Q. And did you buy and sell any small machinery?

A. No, sir.

Q. Can you give us two or three of the types of it*mes*?

A. Screws, nuts, bolts, wrenches, screwdrivers.

Q. Now, did there come a time when you went into another business?

A. In 1946, the spring of 1946 we dissolved the United Purchasers & Distributors, and the partners entered into a new partnership.

Q. And who were the members of the firm from that point on?

A. Bernard Greenglass, David Greenglass, Isidore Goldstein and myself.

Q. And what was the firm name of that partnership?

A. The G. & R. Engineering Company.

Q. And where was the office of the G. & R. Engineering Company?

A. We rented a store on 2nd Street, 200 East 2nd Street.

Q. And what was the business of the G. & R. Engineering Company?

A. It was a machine shop.

Q. And when you commenced business with these three other partners, two of whom were brothers-in-law of yours, [fol. 1573] did you invest any money in that business?

A. Yes, the money that I had invested in United Purchasers & Distributors I reinvested in the G. & R. Engineering Company.

Q. How much money had you invested in the United Purchasers & Distributors business?

A. $1000.

Q. Now, did your brother-in-law, Dave Greenglass, invest any money in the G. & R. Engineering Company?

A. Yes, he did.

Q. How much did he invest?

A. He invested $1000.

Q. And did your brother-in-law Bernard Greenglass invest any money in that?

A. Yes, he did.

Q. How much did he invest?

A. $1500.

Q. And was that likewise true in terms of the amount of the investment as applied to the fourth man, who was not a member of your immediate family, $1500?

A. That is correct.

The Court: You mean $1500?

The Witness: Pardon me, I would like to add one thing, that I invested $1500. in the G. & R. Engineering Company also.

Q. I see. Now, did there come a time when the G. & R. Engineering Company moved its offices?

A. Yes, they did.

Q. And to where did they remove their offices?

[fol. 1574] A. They moved——

Q. And when?

A. They moved to 370 East Houston Street in the fall of 1947.

Q. Now, in the fall of 1947 did there come a time when the G. & R. Engineering Company was dissolved?

A. Yes, there did come a time.

Q. And did there come a time when you, together with your brothers-in-law, Dave Greenglass and Bernie Greenglass, formed a corporation known as Pitt Machine Products Co. Inc.?

A. That is correct.

Q. Now, was there somebody else——

The Court: When?

Mr. E. H. Bloch: I am sorry.

Q. When was the Pitt Machine Products Co., Inc. formed?

A. I don't know the exact date, but it was in the fall of 1947.

Q. Now, was there anybody else besides the three of you, the members of this family unit, who had anything to do with the Pitt Machine Products Co.?

A. Yes, David Schein.

Q. Was David Schein related to you?

A. No, he was not.

Q. Do you know what David Schein's business was at that time?

A. Yes. He had a number of businesses.

Q. Is he——

[fol. 1575] The Court: Was Goldstein in the Pitt also?

Mr. E. H. Bloch: No, Goldstein dropped out of it.

Q. Did Isidore Goldstein drop out of the picture at this point?

A. Yes.

Q. And a new man by the name of David Schein came in, is that right?

A. That is correct.

Q. Did David Schein invest any money in Pitt Machine Products Co., Inc?

A. He invested $15,000.

Q. And what did he get for his $15,000?

Q. He obtained 25 shares of common stock and preferred stock to the amount of $15,000.

Q. Now, did you obtain any shares of the common stock of Pitt Machine Products?

A. I obtained 25 shares of the company.

Q. Did Dave Greenglass obtain any shares of the common stock of that company?

A. Yes, he did.

Q. How much did he obtain?

A. 25 shares.

Q. And was that likewise true of your brother-in-law Bernard?

A. That is correct.

Q. Now, when you commenced operations in that business, was David Schein at all directly involved in the day-by-day operations of the business?

A. He was not.

Q. Now, Mr. Rosenberg——

[fol. 1576] The Court: Excuse me, I don't believe we have the investment of the respective members in the Pitt Machine Company outside of Schein.

Mr. E. H. Bloch: I think you are right, your Honor.

Q. How much did you invest in the Pitt Machine Products Co., Inc.?

A. All my interest in the G. & R. Engineering Company.

Q. And how much was that valued at?

A. A valuation of the entire G. & R. Engineering Company of $15,000. was put up by the accountant.

Q. See if I understand you: That G. & R. Engineering Company, at the time Goldstein dropped out, was really owned by you and your two brothers-in-law, is that right?

A. That is correct.

Q. And you say the combined shares of the three of you—I am talking about this little family unit of yours—totalled $15,000, according to the accountant's valuation?

A. That is correct.

Q. And then Schein, Dave Schein, stuck in $15,000.?

A. I would like to add something else on the investment. At one point in the existence of G. & R. Engineering Company Bernard Greenglass put in $5000. of moneys he had borrowed from the family.

Q. When did he do that?

A. At the time we were buying machines from the [fol. 1577] War Assets Administration.

Q. In other words, after you commenced operations of the Pitt Products Co., Inc., did you purchase from the War Assets Company or Government corporation, machinery prior to the time you started operations as Pitt Machine or subsequent to that?

A. Prior.

Q. And is that what you mean when you said that Dave Greenglass invested $5000.?

A. Bernard.

Q. Bernard?

A. That's right.

Q. Bernard did. How about Dave?

A. None of us invested any additional amounts.

Q. All right. Now, Mr. Rosenberg, are you aware of the charge that the Government has leveled against you?

A. I am.

Q. Do you know what you are being charged with?

A. Yes.

Q. What are you being charged with?

A. Conspiracy to commit espionage to aid a foreign government.

Q. And you have been here all the time that the witnesses who appeared for the prosecution testified?

A. Yes, sir, I have.

Q. And amongst those witnesses did you hear your brother-in-law Dave Greenglass testify?

A. Yes, I did.

Q. And did you hear your sister-in-law Ruth Green-
[fol. 1578] glass testify?

A. I did.

Q. Now I want to direct the following questions and try to have you focus your attention upon your recollection of their testimony.

Mrs. Ruth Greenglass testified here, in substance, that in the middle of November 1944 you came over to her house or you invited her to your house and you asked her to enlist her husband, Dave Greenglass, in getting information out of where he was working and deliver or convey that information to you.

Did you ever have any conversation with Mrs. Ruth Greenglass at or about that time with respect to getting information from Dave Greenglass out of the place that he was working?

A. I did not.

Q. Did you know in the middle of November 1944 where Dave Greenglass was stationed?

A. I did not.

Q. Did you know in the middle of November 1944 that there was such a project known as the Los Alamos Project?

A. I did not.

Q. Located in New Mexico?

A. I did not.

[fol. 1579] Q. Ruth Greenglass has testified further here that——

The Court: Don't you think it would be better, instead of characterizing what she testified to, you ask him certain facts?

Mr. E. H. Bloch: Would you prefer it that way?

The Court: Yes, I would. I think it would be better.

Mr. E. H. Bloch: You see, your Honor, it is so difficult to direct his attention to——

The Court: You try. Just go ahead.

Mr. E. H. Bloch: I will try my best.

Q. Did you ever give Ruth Greenglass $150. or advance to Ruth Greenglass $150., or any sum whatsoever for her to go out to visit her husband in New Mexico, for the purpose of trying to enlist him in espionage work?

A. I did not.

Q. Did you ever give Ruth Greenglass one single penny at any time during your life?

A. I did not.

Q. Now, Ruth Greenglass testified in substance, that she went out to visit her husband, and then she came back here and when she came back here she conveyed certain information which she had received from her husband, and I refer specifically to the names of certain scientists like Dr. Neils Bohr, Dr. Oppenheimer, Dr. Urey. Did you ever have a [fol. 1580] conversation with Ruth Greenglass in the month of December 1944, in which any of those names were mentioned?

A. I did not have such a conversation.

Q. Did Ruth Greenglass at any time mention to you the names of Dr. Neils Bohr, or Dr. Oppenheimer or Dr. Urey, or the name of any other scientist who was ever at the Los Alamos project in New Mexico?

A. She did not.

Q. Did Ruth Greenglass in the middle or in or about December 1944, or at any time, ever disclose to you the names of any of the personnel of the Los Alamos Project, or a description of the layout of that project?

A. She did not.

By The Court:

Q. Well, did she see you at or about that time?

A. December——

Q. 1944?

Mr. E. H. Bloch: December of 1944.

A. Yes, I did see Ruth Greenglass at or about that time.

By Mr. E. H. Bloch:

Q. And to the best of your recollection where did you see her?

A. Well, there would always be a social family gathering on Friday night at my mother-in-law's house.

[fol. 1581] Q. Is that Ethel's mother?

A. That is correct.

Q. What is her name?

A. Mrs. Greenglass.

Q. I mean her first name?

A. Tessie Greenglass.

Q. Where does she live?

A. 64 Sheriff Street.

Q. Did she live at 64 Sheriff Street in 1944?

A. Yes, she did.

Q. And has she always lived at 64 Sheriff Street right along?

A. That is correct.

Q. Did you meet Ruth Greenglass there from time to time on Friday nights?

A. That is correct.

Q. And when the Court asked whether you ever met her there, was there anything said at your mother-in-law's house about espionage, or about getting information out of Los Alamos, or anything pertaining to the testimony of Ruth Greenglass on these lines?

A. There was not.

By The Court:

Q. Well, did you know that she had been out to see David?

A. In November 1944?

Q. Yes, when she came back, did you know that she had been out there?

A. When she came back, we knew that she had visited him at his camp.

Q. Did you know where it was?

A. No. She told us—I am talking about the family—that she visited Albuquerque.

By Mr. E. H. Bloch:

[fol. 1582] Q. New Mexico?

A. That is right.

Q. Did you associate Albuquerque, New Mexico, with the Los Alamos Project?

A. No, I did not.

Q. Did you know of the existence of the Los Alamos Project in December 1944?

A. I did not.

Q. Did you associate Albuquerque, New Mexico, with any secret project of the United States?

A. I did not.

Q. Now then, there has been testimony here about the first furlough that Dave Greenglass had, where he came back to New York—well, starting with January 1, 1944, and extending for a period of about fifteen days while he was here; and Dave Greenglass and Ruth Greenglass testified that about two days after Dave came into New York you came over to their house one morning and you asked Dave for certain information about the Los Alamos Project, the work he was doing, the names of scientists, or whatever it is; did you ever go over to the Greenglass's house and ask them for any such information?

A. I did not.

Q. Or was any such information conveyed to you at that time?

A. It was not.

Q. There has been further testimony from the lips of Dave Greenglass and Ruth Greenglass that you asked Dave Greenglass, after he conveyed certain oral information, to [fol. 1583] write it down, and that the following morning you came back and he delivered to you a copy of a sketch, together with certain written material; did you go to the Greenglass's home and obtain a written sketch and *and* any description of that written sketch, or any other written matter from Dave Greenglass, concerning Los Alamos or any of the things that were taking place at the Los Alamos Project?

A. I did not.

By The Court:

Q. Did you see David Greenglass when he came to New York in January 1945 on a furlough?

A. Yes, I did.

Q. Did you see him at your home or at his home?

A. I saw him first at my mother-in-law's house.

Q. And then?

A. And then, while we had dinner there, the members of the family invited Dave and Ruth Greenglass over their house for supper, and we made a family invitation to Dave and Ruth to come to our house for supper.

Mr. E. H. Bloch: I am going to get to that, your Honor.
The Court: Just a moment.
Mr. E. H. Bloch: Yes.

Q. When you met him on that first occasion, did he tell you where he was stationed?

A. When he was at my mother-in-law's house he told everybody present that he was working on a secret project [1583a] near Albuquerque.

Q. I show you Government's Exhibit 2 and ask you whether or not Dave Greenglass ever delivered to you a sketch substantially similar to the sketch that you hold in your hand, in January 1945 (handing)?

A. He did not deliver such a sketch.

[fol. 1584] Q. Or at any other time?

A. I never saw this sketch before.

Q. Have you ever seen a sketch like that in your life?

A. I have never seen a sketch like this before.

Q. Now then, I believe, in response to the Court's questions just now, you were asked when you first saw Dave Greenglass when he came back on his first furlough in January 1945, and I believe you said, at your mother-in-law's house.

A. That is correct.

Q. Is that the time he said to you, as well as to other members of the family present, that he was working on a secret project?

A. That is correct.

Q. Did you know at that time that he was working at Los Alamos Project?

A. No, I did not know.

Q. Did you associate in your own mind the words "Secret Project" or the information from Dave Greenglass that he was working on a secret project, with the Los Alamos Project?

A. I did not.

Q. Did you associate where Dave Greenglass was working in New Mexico with any project developing the atom bomb?

Mr. Saypol: Just a moment.

A. I did not.

Mr. Saypol: Just a moment, please. Your Honor may have observed that I have been completely reserved [fol. 1585] in respect to making objections as to matters of form or even matters of incompetent evidence, but I think we have gotten to the point where we ought to get away from conclusions and operations of the mind and characterizations of testimony, as elicited on the part of counsel.

The Court: No, no, that is the only way he can answer the charges. We have got to find out what was in his mind.

Mr. Saypol: True.

The Court: But I would prefer if you don't characterize the other testimony, Mr. Bloch.

Mr. E. H. Bloch: All right, I am going to try not to do that. You see, I remember it, but I am not so sure that he has a legal mind and can remember it the way I can.

The Court: If you have difficulty, then——

Mr. E. H. Bloch: All right.

By Mr. E. H. Bloch:

Q. Did you, at any time during Dave Greenglass' furlough in New York in January 1945, describe to him an atom bomb?

A. I did not.

Q. Could you describe an atom bomb today or how an atom bomb works, or the component parts of an atom bomb and the functions of each part and the interrelations [fol. 1586] of each part?

A. Well, I heard in court a description of the atom bomb and outside of that I have never heard a description like that before, and I would say that I cannot repeat that description.

Q. Now, tell me, Mr. Rosenberg, you received an engineering degree, did you not?

A. That is correct.

Q. Did you, in the course of your studies looking toward getting that degree, ever take courses in nuclear physics?

A. I did not.

Q. Or any advanced physics?

A. I did not.

By The Court:

Q. At any time prior to January 1945, had anybody discussed with you, anybody at all, discussed with you the atom bomb?

A. No, sir; they did not.

Q. Did anybody discuss with you nuclear fission?

A. No, sir.

Q. Did anybody discuss with you any projects that had been going on in Germany?

A. No, sir.

Q. On the atom bomb?

A. No, sir.

Q. No?

A. No, sir.

By Mr. E. H. Bloch:

Q. What was your field as an engineer?

A. My field as an electrical engineer was the production of electronic communications equipment, radio receivers [fol. 1587] and transmitters and radio telephones.

Q. And was that the type of work that you did for the Government of the United States while you were employed by them from 1940 to 1945?

A. Yes, that was the type of work.

Q. And was that type of work that you did while you were employed at Emerson Radio during the year 1945?

A. No, I did some research work for Emerson Radio.

Q. What kind of research work did you do with Emerson?

A. Some development work on some new projects they were making for the Navy and Army.

Q. Did that research work involve work in a field of nuclear physics?

A. No, it did not.

Q. Now, following the Court's question about whether or not you saw Dave and Ruth Greenglass on furlough——

The Court: Do you think this is a good time to take a recess?

Mr. E. H. Bloch: If the Court please, I would welcome it.

The Court: All right, we will recess until 10:30 tomorrow morning.

(Jury excused.)

[fol. 1588] Mr. Phillips: May I come to the bench for a moment?

Mr. A. Bloch: May I step up to the bench?

(The following took place at the bench.)

Mr. Phillips: If your Honor please, I don't know if I made clear the motion that I should have made, namely, for the release of the defendant on the ground that the testimony up to the time to the close of the people's case——

The Court: Well, you move for a dismissal of the indictment. That would bring with it the release of the defendant.

Mr. Phillips: Well, on the additional ground that the testimony does not warrant submitting to the jury——

The Court: In other words, Government hasn't made out a prima facie case.

Mr. Phillips: Government hasn't made out a strong enough case.

The Court: A prima facie case.

Mr. Phillips: Prima facie case to warrant beyond a reasonable doubt the conviction of this defendant.

Mr. Kuntz: Off the record.

(Further discussion off the record.)

[fol. 1589] Mr. Phillips: Now, one other thing: In Government's Exhibit 25 and——

The Court: 25 and 25-A.

Mr. Phillips: I move to strike out from the consideration of the jury—I think it is very close to the side on which the name of Sobell is not written—the words "Deported from Mexico."

The Court: No.

Mr. Phillips: Just a moment. The reason is, it is very

clear from the witness' own testimony that that was h
mental reaction, his conclusion, and not based on any fact

The Court: No, that is denied.

I suggest that you read the statute under which it
admitted. Read Section 1732. You will see all of th
affects weight; doesn't go to admissibility.

Mr. Phillips: The motion is made.

The Court: Title 28, 1732.

(Further discussion off the record.)

(Adjourned to March 22, 1951, at 10:30 a.m.)

[fol. 1590] New York, March 22, 195

10:30 o'clock a.m.

Trial resumed.

JULIUS ROSENBERG, resumed the stand.

Direct examination (Continued).

By Mr. E. H. Bloch:

Q. Now Mr. Rosenberg, will you keep your voice up th
way you did yesterday? Now I would like to go back an
cover just one or two items in terms of chronologic
sequence with regard to your life. You testified yesterda
with respect to various places that you resided from th
time of your marriage until you moved into Knickerbocke
Village in 1942, do you remember that?

A. That is correct.

Q. Now I am going to ask you whether or not you eve
lived in Williamsburg, Brooklyn, during any period fro
1939 to 1942?

A. Yes, sir, I did.

Q. Now, how long did you live there?

A. For just about one year from the date of my marriag
until we went to Washington, D. C.

Q. You didn't tell us about that yesterday?

A. It slipped my mind, sir.

[fol. 1591] Q. With whom did you live in Williamsburg?

A. I lived with a friend who was a classmate.

Q. What is his name?

A. Marcus Pogarsky.

Q. Was Pogarsky ever known as Page?

A. Yes. Later on he changed his name to Page.

Q. What was his wife's name?

A. Stella.

Q. Did you and your wife live with the Pages in that apartment in Williamsburg?

A. Yes, sir. We had a bedroom there.

Q. To come to the middle of November 1944, with respect to the alleged talk that you had with Ruthie Greenglass, your sister in law, before she went out to visit her husband at Los Alamos I would like to focus your attention to that particular incident that has been testified here: Did you ever tell Ruthie that you were now doing the work that you always wanted to do, to engage in getting information to the Soviet Union or to the Russians or words to that effect?

A. I did not.

Q. Now, did you ever tell her at that time that you had learned about the atomic bomb from friends?

A. I did not.

Mr. E. H. Bloch: May I have the exhibit with the picture of Yakovlev?

(Photograph handed to E. H. Bloch.)

Q. Now, I am going to show you Government's Exhibit 15 [fol. 1592] in which there appears a photograph of a man by the name of Anatoli Yakovlev, and after looking at that picture can you tell us whether you recognize who that is?

A. No, sir, I have never seen this man in my life.

Q. Did you ever know any Russian by the name of John?

A. No, sir, I did not.

Q. Did you know any Russian who was connected with the Soviet Embassy or any of the Soviet Consulates or any official of the Russian Government at any time in your life?

A. I did not.

Q. Now, to come to the time when your brother in law

Dave came on his first furlough from New Mexico to New York in January 1945——

The Court: Excuse me: Did you know anybody at all in the Russian Consulate office?

The Witness: I did not, sir.

Q. Now, to come to the furlough around January 1945 when Dave came in: Where were you working at that time?

A. In January 1945 I was working as assistant to the area officer of the Signal Corps, branch of the Air Corps at that time.

Q. Did you go to work every day?

A. Yes, I did.

Q. During this period?

A. Yes, sir.

[fol. 1593] Q. And what time were you required to report for work?

A. At 9 o'clock in the morning.

Q. And can you tell us now where you reported for work in January 1945 while employed in the capacity you have just described for the United States Government?

A. Well, the area that we were in charge of was the west side of Manhattan from 14th Street all the way up to Westchester and I would report to the headquarters usually of that area officer which was Reeves, a crystal plant.

Q. Now, there has been a mention here of Reeves Instrument Company; was this Reeves concern, that you just say you had to report to in January 1945, the same Reeves Instrument Company?

A. I do not know, sir. It may have been connected.

Q. Well, is there anything in your mind now about the name of that company or any name or any word in that name of that company that differentiates it from Reeves Instrument Company?

A. No, I can't recall, but I could say that the Reeves headquarters, that I had to go to, was, I believe, on the west side of Manhattan.

Q. Do you know about what street?

A. No, I can't recollect. It was in the fifties, I believe.

Q. And is that as close as you can get to it?

A. Yes, sir.

[fol. 1594] Q. How long had you been reporting to that particular Reeves building or office?

A. Well, it was no more than a period of three months.

Q. About this period?

A. That's right, sir.

Q. Who was your superior at that time?

A. Lieutenant Olcott, who was the area officer.

Q. And was this office in this Reeves office or building?

A. That's right, sir.

Q. Now, you said that you had to report at 9 o'clock in the morning; is that correct?

A. That is correct.

Q. I want you to tell the Court and jury how you used to go to work from your residence at 10 Monroe Street to the place where you were required to go to work in January 1945?

A. Well, I would leave my apartment; walked down Monroe Street; cross over to Madison Street; walk about three blocks on Madison Street to the Eighth Avenue Subway; go down the subway and take the Eighth Avenue subway up to the fifties.

Q. There has been testimony by the Greenglasses here that at that time they lived at 266 Stanton Street; do you know where that is?

A. Yes, sir.

Q. Did you ever have to go from your house to any place in the neighborhood of 266 Stanton Street, as a direct route, to report to work during that period?

A. No, sir; I did not.

[fol. 1595] Q. How does one go from your residence at 10 Monroe Street to 266 Stanton Street?

A. Well, you walk down Catherine Street until you get to east of Broadway and you take the Avenue B bus.

The Court: What is the relevance of this?

Mr. E. H. Bloch: Well, if the Court please——

The Court: I am going to permit you the widest latitude. Let's not overdo it.

Mr. E. H. Bloch: I am telling you why I am doing this, your Honor. The Greenglasses testified, I believe, that this defendant came around to their house in the morning, about two or three days after Dave Greenglass came on his fur-

lough, and then he is alleged to have said, "What is your information? Write it down"; and then the following morning he came back and he was supposed to——

The Court: It is not a direct route; it is an indirect route; is that what you are trying to show?

Mr. E. H. Bloch: Well, no, you see the improbability, your Honor.

The Court: Go ahead.

Q. Well, at any rate, how long does it take you to get from 10 Monroe Street by transportation to 266 Stanton Street?

A. About a half hour.

Q. Did you ever use any route to get to your place of [fol. 1596] business, which took you anywhere near 266 Stanton Street?

A. No, sir; I did not.

Q. Now, did you at any time while Dave Greenglass was here on his first furlough in about January 1945 ever go to Dave Greenglass' house in the morning?

A. I did not.

Q. To get information from him?

A. No, sir; I didn't get—go to get any information.

Q. Now, did you, while Dave Greenglass was on his furlough here, ever introduce Dave Greenglass to a man on First Avenue, I believe, somewhere between 42nd and 59th Street, where Dave Greenglass came up in an automobile and you introduced him to a man, and the man got in the automobile with him; then they drove around and they came back; and then you went with this man and Dave left; did any such incident ever occur?

A. That incident never occurred, sir.

Q. Now, I would like to direct your attention to the time when you invited Dave Greenglass and Ruth Greenglass to your house for dinner; that did occur, did it not, on Dave's first furlough?

A. Yes, it did.

Q. And could you tell us now from your recollection whether or not there was a woman by the name of Ann Sidorovich present?

A. I could not, sir.

Q. Do you know Ann Sidorovich?

A. Yes, I do.

Q. How long have you known her?

A. Well, later on in the year that we moved into [fol. 1597] Knickerbocker Village, the Sidoroviches took an apartment on the floor above us.

Q. Were they neighbors of yours?

A. Yes, sir; they were.

Q. Were they neighbors of yours in January 1945?

A. No, they were not.

Q. To the best of your recollection, when did the Sidoroviches move out of Knickerbocker Village?

A. Well, I am not exactly clear on it, but I think they lived in Knickerbocker approximately one year.

Q. Would that mean, according to your best recollection, they moved out of Knickerbocker Village sometime in the year 1943?

A. That is correct.

[fol. 1598] Q. And do you know to where the Sidoroviches moved?

A. Well, at that time they bought a house in Chappaqua, Westchester.

A. And is Chappaqua a suburb near White Plains, New York?

A. Yes, it is.

Q. And did you ever visit the Sidoroviches at their house in Chappaqua?

A. Yes, I did.

Q. And did they ever visit you at your house after they moved away from Knickerbocker Village?

A. Yes, they did.

Q. Did you know Mr. Sidorovich prior to the time that you knew Mrs. Sidorovich?

A. Yes, I did.

Q. Where did you first meet Mr. Sidorovich?

A. I met Mr. Sidorovich at Seward Park High School in some of my classes.

Q. Did Mr. Sidorovich attend classes with you at CCNY?

A. No, he did not.

Q. Did you subsequently meet Sidorovich at a place where you were employed, after you graduated from college?

A. Yes, I did.

Q. And where is that place?

A. That was at Paul Williams' place.

Q. And was that one of the places that you recounted to us yesterday?

A. Yes, it was.

Q. Now did you ever invite Ann Sidorovich to your house [fol. 1599] to meet the Greenglasses for the purpose of effecting an introduction between Ann Sidorovich and the Greenglasses so that Ann Sidorovich could go out to the Southwest or the West and exchange some information with the Greenglasses?

A. I didn't do any such thing?

Q. Did you ever engage in any illegal activities or have any understanding——

(Mr. Saypol rises.)

Mr. E. H. Bloch: I withdraw that, Mr. Saypol.

Mr. Saypol: I would rather have the jury judge that.

Q. Did you ever have any discussion with Ann Sidorovich or her husband at any time with respect to getting any information relating to the national defense in this country?

A. I did not.

By The Court:

Q. Did you ever discuss with Ann Sidorovich the respective preferences of economic systems between Russia and the United States?

A. Well, your Honor, if you will let me answer that question in my own way I want to explain that question.

Q. Go ahead.

A. First of all, I am not an expert on matters on different economic systems, but in my normal social intercourse with my friends we discussed matters like that. And I believe there are merits in both systems, I mean from what I have [fol. 1600] been able to read and ascertain.

Q. I am not talking about your belief today. I am talking about your belief at that time, in January 1945.

A. Well, that is what I am talking about. At that time, what I believed at that time I still believe today. In the first place, I heartily approve our system of justice as performed in this country, Anglo-Saxon jurisprudence. I

am in favor, heartily in favor of our Constitution and Bill of Rights and I owe my allegiance to my country at all times.

By Mr. E. H. Bloch:

Q. Do you owe allegiance to any other country?
A. No, I do not.
Q. Have you any divided allegiance?
A. I do not.
Q. Would you fight for this country——
A. Yes, I will.
Q. —if it were engaged in a war with any other country?
A. Yes, I will, and in discussing the merits of other forms of governments, I discussed that with my friends on the basis of the performance of what they accomplished, and I felt that the Soviet government has improved a lot of the underdog there, has made a lot of progress in eliminating illiteracy, has done a lot of reconstruction work and built up a lot of resources, and at the same time I felt that they contributed a major share in destroying the Hitler beast [fol. 1601] who killed six million of my co-religionists, and I feel emotional about that thing.
Q. Did you feel that way in 1945?
A. Yes, I felt that way in 1945.
Q. Do you feel that way today?
A. I still feel that way.

The Court: Did you approve the communistic system of Russia over the capitalistic system in this country?

The Witness: I am not an expert on those things, your Honor, and I did not make any such direct statement.

Q. Did you ever make any comparisons in the sense that the Court has asked you, about whether you preferred one system over another?
A. No, I did not. I would like to state that my personal opinions are that the people of every country should decide by themselves what kind of government they want. If the English want a King, it is their business. If the Russians want communism, it is their business. If the Americans want our form of government, it is our business. I feel that the majority of people should decide for themselves what kind of government they want.

Q. Do you believe in the overthrow of government by force and violence?

[fol. 1602] A. I do not.

Q. Do you believe—do you believe in anybody committing acts of espionage against his own country?

A. I do not believe that.

Q. Did you unhesitatingly express, in substance, the thoughts that you have just expressed about the Soviet government, the American Government, to your friends and to your relatives?

Mr. Saypol: Well, I submit, if your Honor please, just a moment ago in response to the Court's question the witness answered that he did not know enough about it and never talked to anybody about it.

Q. Well, do you presume to be an expert on government?

A. Well, I am not an expert but I talked about these matters.

Q. Have you read books?

A. Yes, some books I have read.

The Court: Well, did you ever belong to any group that discussed the system of Russia?

The Witness: Well, your Honor, if you are referring to political groups—is that what you are referring to?

The Court: Any group.

The Witness: Well, your Honor, I feel at this time that I refuse to answer a question that might tend to incriminate [fol. 1603] me.

Q. Are you——

Mr. Saypol: Just a moment. May I clarify that?

The Court: It seems to me I have been hearing a lot about that.

Q. Are you referring to membership in the Communist Party?

A. Well, I am referring to membership in any political organization like the Communist Party.

Q. And when you answered the Court's question did you have in mind the Communist Party?

A. Yes, I did.

The Court: Well now, I won't direct you at this point to answer; I will wait for the cross-examination.

Q. Do you want to say anything more about ideas on politics—if the Court wants it, I don't know.

A. I can say this——

The Court: No, he has replied.

Mr. E. H. Bloch: All right, may I then continue, your Honor?

The Court: You may continue.

Mr. E. H. Bloch: I am trying to do this chronologically.

The Court: Go ahead.

Q. You now say that you cannot tell us with certainty whether or not Ann Sidorovich was present on that evening [fol. 1604] when you had invited the Greenglasses over to your house?

A. Well, I can't recall.

Q. She has been over to your house on a number of occasions?

A. Yes, she has been.

Q. Now you say the Sidoroviches moved out of Knickerbocker Village in 1943 and moved to Chappaqua, is that right?

A. That is correct.

Q. Did you spend any vacation at Chappaqua with the Sidoroviches, with your family?

A. Yes, in the spring of 1944 with my wife and child Michael we spent a vacation there.

Q. Now did there come a time when the Sidoroviches moved from Chappaqua?

A. Yes, there did come a time.

Q. Do you know to what place they moved?

A. Yes, I do.

Q. Where did they move to?

A. They moved to Cleveland.

Q. Did you receive any communication from them while they were residing in Cleveland?

A. Yes, I did.

Q. Tell the Court and the jury what kind of communication you received from the Sidoroviches?

A. We received Christmas cards on occasion, and when their child was born we received an announcement card of the birth of their child.

Q. Did you ever visit the Sidoroviches in Cleveland?

[fol. 1605] A. No, I did not.

Q. Did the Sidoroviches ever visit you after they had moved to Cleveland?

A. I do not recall. There may have been an occasion.

Q. How long would you estimate the Sidoroviches have lived in Cleveland?

A. I can't tell exactly.

Q. Is it four years or five years or six years? Would that help you in any way?

A. I would venture a guess for about five years.

Q. Now let us come to this night when the Greenglasses were in your house: Did you ever have any transaction with the Greenglasses in which a Jello box was involved?

A. No, I did not.

Mr. E. H. Bloch: May I have the Jello box?

(Handed.)

Q. Now I show you Government's Exhibit 4 and I show your Government's Exhibits 4-A and 4-B, Government's Exhibit 4 being an ordinary Jello box that is in use and 4-A and 4-B being one of the sides of a Jello box which has been cut out for certain purposes of this trial, and ask you whether or not you ever, or whether your wife ever cut the side of a Jello box in the manner in which 4-A and 4-B are cut, or whether you cut any side of any Jello box at any time?

A. I did not.

Q. With the Greenglasses present?

A. I did not.

[fol. 1606] Q. Did any such incident ever take place?

A. It never did.

Q. Now, did you or your wife say the evening that the Greenglasses came over to visit you in that January 1945 period that your wife Ethel was very tired because she was up late typing material for the Russian government or for the Russians?

A. I did not say anything of the sort.

Q. So far as you know, did your wife ever type any material for transmission to the Soviet Union or the Russian government?

A. She did not.

Q. Did you ever type any material for transmission to the Soviet Union or the Russian government?

A. I did not.

Q. Or any citizen or subject of Russia or any Russian?

A. No, sir, I did not.

Q. Did you on that occasion as substantially testified to by the Greenglasses say that the money that you had given Ruth or advanced to Ruth when she went out in November could be forgotten about and they could consider that a gift? Did you say anything about that subject?

A. I didn't say anything about that subject because I didn't give them any money.

Q. Did you say at that time to them in connection with this Jello box incident which you heard the Greenglasses [fol. 1607] describe on the stand, "the simplest things are very cleve, or always clever"?

A. No, I didn't say anything of the sort.

Q. Did you tell Ruth or Dave Greenglass that you were entertaining and spending $50. or $75. a night in connection with your espionage work?

A. I didn't tell Dave or Ruth Greenglass or anybody that.

Q. Did you ever entertain anybody for any espionage work?

A. I did not, sir.

Q. Tell me, how many suits have you bought for the last eleven years?

A. About five suits.

Q. Did you come into court with a coat?

A. Yes, sir.

Q. When did you buy that coat?

A. I would say it was either 1941 or 1942.

Q. Did you ever buy a winter overcoat since then?

A. No, sir, I did not.

Q. How much did you pay for that coat?

A. Well, I estimate it was somewhere about $55.

Q. How much do you pay for your suits?

A. About $26.

Q. Tell us what clothes you bought for your wife just roughly during this 11-year period from 1940 to 1950?

A. When I got a per diem check once while working for the Government.

Q. When was this?

A. I think it was about the same time I bought my coat, I bought her a fur coat.

[fol. 1607A] Q. How much did you pay for it?

A. $80., and we remodeled it a couple of times and she still has it. Well, my wife bought her own clothes. I didn't buy her clothes for her.

Q. Do you know about how much she spent on clothes for the last ten years?

A. Well, sir, I would estimate a maximum of about $300.

[fol. 1608] Q. Now, give us your best recollection of what actually occurred when the Greenglasses came to visit you that night?

A. What night are you referring to, Mr. Bloch?

Q. We are talking about the night that you invited them, when Dave was here on his first furlough?

A. Well, it was a family gathering. We talked about my child, and told them I am working with the Army; I am working hard; and we told them how we were and we asked him how he was. He told us he was fine; he said he was a machinist at that time, and he just repeated that he was a machinist.

By The Court:

Q. Didn't you know he was a machinist in '44, when you saw him?

A. Yes, but he said he was working as a machinist at that time. I knew he was a machinist in '44; he was a machinist before he went into the Army, but he said his assignment was that he was a machinist and he just repeated that he was working on a secret project, and I didn't press him on anything like that.

By Mr. E. H. Bloch:

Q. Did he tell you at that time he was working at Los Alamos?

A. No, he did not.

Q. Did he tell you at that time that he was working on the atom bomb Project?

A. No, sir; he did not.

[fol. 1609] Q. Did you mention anything about atom bomb at that time?

A. I did not.

Q. Did you know anything about atom bomb at that time?

A. I did not.

Q. Did you discuss politics with them that night?

A. Well, as every intelligent American did in those times, we discussed the war.

Mr. Saypol: May I ask to have the answer stricken as not responsive.

Mr. E. H. Bloch: I consent.

Mr. Saypol: I don't want this man set up as a standard for intelligent Americans.

Mr. E. H. Bloch: Now, I move to strike out Mr. Saypol's statement.

The Court: Disregard Mr. Saypol's statement and strike from the record "intelligent Americans."

Q. Never mind about any intelligent American. We are asking you whether you and your wife and sister-in-law and brother-in-law discussed politics?

A. Yes, we discussed the war.

Q. Was that unusual for you to discuss politics with your family or friends?

A. No, it was not.

Q. Have you any independent recollection of what specific subject you discussed that night with Dave and Ruth?

[fol. 1610] A. Well, we were talking about the effort all the different Allies were making in the war and we noted that the Russians were carrying at that particular time the heaviest load of the German Army.

Q. Did there come a time when Dave left to go back?

By The Court:

Q. Did you express any opinion that the Russians were not getting the cooperation from the Allies that they were entitled to?

A. No, I expressed the opinion that I felt that it was my opinion, not as an expert, but as an individual, that there

should be a second front at that time. I don't remember if it was at that time.

Q. What I am asking you is, did you express the opinion that the Allies—that the Russians were not getting the cooperation from the Allies that they were entitled to?

A. No, I didn't express that opinion, sir.

Q. Well now, had you already met Mr. Elitcher, had you not, by that time?

A. What time?

Q. January.

A. January, '44?

Q. '45.

Mr. E. H. Bloch: '45.

A. Yes, I had met Mr. Elitcher.

Q. And you had seen him in Washington?

A. Yes, sir.

[fol. 1611] Q. In June of '44; is that correct?

A. Now, I don't remember the exact time. Can I discuss that?

Mr. E. H. Bloch: Certainly, tell the Court at what time you saw him.

The Court: If you would rather hold that, if you want the details, Mr. Bloch?

Mr. E. H. Bloch: I was going to come to that, your Honor. If your Honor wants that now, you may have it.

The Court: All right.

Mr. E. H. Bloch: Will your Honor reserve the question? I will come to the Elitcher visits.

The Witness: Do you want me to answer?

The Court: Your lawyer wants the question held in abeyance.

Mr. E. H. Bloch: We will come to the Elitcher visits.

By Mr. E. H. Bloch:

Q. You did see Mr. Elitcher sometime in 1943 and '44 in Washington, did you not?

A. Yes, sir.

Q. Were you working for the Government at that time?

A. Yes, I was.

Q. Did there come a time when you were assigned by the Government here in New York to go down to Washington [fol. 1612] and to work at the Bureau of Standards for a couple of days?

A. Yes, there did come a time.

Q. And it was during that period that you saw Mr. Elitcher and came over to his house?

A. That's right, sir.

Q. Now, we will come to the conversation you had with Elitcher later, but I wanted the Court to be apprised of your visit there. Did there come a time when Dave Greenglass left New York to go back to the Southwest.

A. Yes, there came a time when he went back to his camp.

Q. Did you see Dave Greenglass at any time during the period after he went back in January, '45 to the time he came back to New York later that year?

A. No, I did not.

Q. Did you see Ruthie Greenglass?

A. Yes, I did see Ruthie Greenglass.

Q. When was the first time that you saw Ruthie Greenglass after Dave went back?

A. Well, between the time that Dave Greenglass left for his camp and the time that Ruth Greenglass went to live with him, I saw Ruth Greenglass.

Q. Do you know whether the Greenglasses gave up their apartment on Stanton Street when Ruthie went out to live with Dave at camp?

A. I am not certain of it, but I believe they did.

[fol. 1613] Q. Now, when you say you saw her again, did you see her in their Stanton Street apartment?

A. I think I did.

Q. I want you to tell the Court and jury the circumstances under which you saw her that time?

A. Ruthie called me up and told me she wanted to see me.

The Court: When is this? Did you fix the time?

Mr. E. H. Bloch: Yes.

Q. Now, can you fix the time, as best you can?

A. Well, Mr. Bloch, it is so many years ago, I am hazy about the exact time. I can just specify it, it is between the time Dave Greenglass left for his camp and the time Ruth

Greenglass left to live with him. I don't know the exact number of months, something like that.

Q. That would make it, according to the testimony we have had so far, sometime between the middle of January 1945 and March or April 1945; does that mean anything to you?

A. Yes, it would be in about that period.

Q. Could you tell us whether it was early February or late February?

A. I can't be specific, but I would say it probably was [fol. 1614] in February. It was not long after he left.

Q. Well, does this refresh your recollection: Do you remember when you started to work for Emerson Radio?

A. Yes, late February.

Q. Was it before you started to work for Emerson Radio?

A. I cannot recall.

Q. At any rate, there came a time when you say you received a telephone call from her?

A. That's right.

Q. And what did she say to you?

A. She would like to see me.

Q. Did you go over to see her?

A. Yes, I went over to see her.

Q. Tell us what happened when you went over to see her?

A. It was one evening after supper, I don't know how many days it was after she called, and I went up to her apartment; it was on Stanton Street; and I when I entered the apartment she whispered in my ear, "I would like to talk to you alone. Tell the kid to go into the bathroom."

Q. Now, when you refer to "the kid," to whom are you referring?

A. Well, her sister, Dorothy Printz, was in the room.

Q. Did you see Dorothy Printz here on the stand?

A. Yes, I did, and that is how——

[fol. 1615] Q. Is that the girl to whom you are referring?

A. Yes, and that is how I recalled the incident, because when she testified here in court I remembered being at her house.

Q. All right. Now, then what happened?

A. Well, after Dorothy went into the bathroom——

Q. Who told Dorothy to go in the bathroom?

A. I did.

Q. Go ahead. Now tell us what the conversation was?

A. Ruthie told me something to this effect: "Julius, I am terribly worried. David has an idea to make some money and take some things from the Army"; and I told her, "Warn David not to do anything foolish. He will only get himself in trouble. I have read some accounts in the newspapers about some G. I.'s doing foolish things and taking parts and gasoline from the Army, and their getting themselves in trouble," and I told her, "Don't tell—make sure to tell him that he doesn't do anything of the sort".

By The Court:

Q. Well, did she say what he wanted to take?

A. No, she did not. She just mentioned the word "things". That is what I can remember in my mind.

Q. Did she say what he wanted to do with it after [fol. 1616] he took it?

A. No, she didn't. She just said he wanted to make some money.

Q. You didn't know whether he wanted to take something for his own use or whether he wanted to give it to somebody else?

A. I have no idea, sir.

By Mr. E. H. Bloch:

Q. Was any discussion had at that time about any matters relating to the national defense of the United States?

A. No, sir; there were no discussions.

Q. Was there any talk at that time about any information which was to be conveyed to the Los Alamos Project?

A. No, there was no talk like that.

By The Court:

Q. When had you seen her before? You said about a month before?

A. I saw her when Dave and Ruth were over our house for dinner, and possibly I saw them at my mother-in-law's house again before they left, before Dave left for his camp.

Q. So that when they were over at your home for dinner,

there was no discussion at that time about him wanting to do anything foolish, in taking things from the Army?

A. No, there was no discussion at that time.

Q. As far as you know, Ruth Greenglass had not seen David Greenglass between the dinner at your home and [fol. 1617] the time she came to see you?

A. She came to see me?

Q. Rather, you came to see her.

A. Well, they were together on furlough all the time he was in.

Q. Well, after he left and went back, and this is at the end of February that she came to see you, as far as you know, after he went back at the end of January, until the end of February, she had not seen him?

A. I didn't specify, sir, what part of February it was, because I don't recall, and I didn't know exactly when she had seen him last. The last time she saw him was on the last day of his furlough.

The Court: Very well.

A. (Continuing) I don't know whether she spoke about these matters.

Q. It was sometime after he went back on his furlough that she came to see you; isn't that right?

A. She didn't come to see me.

Q. Rather, you came to see her.

A. Right.

Q. It was sometime after he went back?

A. That's right.

The Court: Proceed.

By Mr. E. H. Bloch:

Q. Have you any knowledge as to whether or not Ruthie Greenglass communicated with Dave Greenglass from the [fol. 1618] time Dave Greenglass went back to his camp in New Mexico, at the end of his furlough, to the time you saw her, with respect to this conversation that you just testified about? That is what the Judge wants to know.

A. I have no knowledge, but they may have sent letters to each other.

By The Court:

Q. In other words, then you are saying now that this information of Ruth Greenglass probably came in a letter?

A. I am not saying anything of the sort, sir.

Q. All right, you don't know how it came?

A. No, sir.

Q. Now, can you think of any reason why she came to see you about it? Were you closest to them?

A. Well, I was a relative and she wanted my opinion on it.

Q. Well, I know you are a relative. They had other relatives. Is there any particular reason that you can think of that she came to see you?

A. Well, I was the brother-in-law of Dave; his other brother was overseas; and his other brother was married and living away from home. I was the only close relative around, I guess.

The Court: All right.

[fol. 1619] By Mr. E. H. Bloch:

Q. I now show you Government's Exhibit 5 (handing to witness), and ask you whether or not you ever met that man, at any time?

A. No, I did not, sir.

Mr. E. H. Bloch: May I just for the elucidation of the jury state that I am referring to Harry Gold?

Q. Did you ever talk to Harry Gold in your life?

A. No, I did not.

Q. Did you know who Harry Gold was or what his activities were, until you read about it in the newspapers, after his arrest?

A. I did not know about his activities until I read about him in the newspapers.

Q. Did you know anything about an incident, which has been testified hereto by Ruth and Dave Greenglass and by Harry Gold, that occurred in Albuquerque, New Mexico, on June 3, 1945, where Gold gave your brother-in-law Dave $500. and Dave gave him some sketches and some information?

A. I did not.

Q. Did you know about that incident?

A. I did not know of any such incident.

Q. When was the first time that you found out that such an incident took place?

A. When I heard it in the courtroom.

Q. Did you see Harry Gold or did you see any Russian or did you see any person with respect to arranging a [fol. 1620] meeting between Harry Gold and the Greenglasses in New Mexico, in June 1945?

A. I did not.

Q. Or at any other time?

A. I did not.

Q. Now your sister-in-law, Ruth Greenglass, testified—and I want to come back for one second to that meeting at your house—that she had a miscarriage sometime in May 1945; do you remember that?

A. Yes, I heard it.

Q. And did you also hear her testify that in your house, when they came over on Dave's furlough in January 1945 there was some talk about having some emissary or courier meet them at a Safeway store in Albuquerque? Do you remember that testimony?

A. Yes, I do.

Q. Was any Safeway store mentioned in your house that evening?

A. It was not.

Q. Or at any other time?

A. It was not.

Q. With respect to the Greenglasses?

A. It was not.

Q. Have you any independent recollection now when you found out that Ruthie had a miscarriage out in New Mexico in May 1945?

A. No, I did not.

Q. Did you communicate with the Greenglasses from the time Dave left New York on his furlough in January 1945 until June 3, 1945?

A. No, I did not.

[fol. 1621] Q. By telephone?

A. I did not.

Q. Or by letter?

A. I didn't write them.

Q. Or in any way?

A. No, I did not.

Q. Whether through yourself or through anybody that you authorized to communicate with them?

A. I didn't authorize anybody to write them.

Q. Now both Dave Greenglass and Ruth Greenglass testified that Dave Greenglass had a second furlough in 1945 and I believe he said it was September 1945.

Now, before we come to that second furlough in New York, I want to ask you whether or not you ever communicated with Dave Greenglass or Ruth Greenglass from June 3, 1945 until Dave came back here on the second furlough?

A. I did not communicate with them.

Q. Do you know whether or not your wife communicated with the Greenglasses at any time after Dave left New York on his first furlough, after his first furlough until Dave came on in his second furlough that year?

A. I know it was usual for my wife to write to her brothers in the camps.

Q. Your wife did correspond with Dave and Ruth, did she not?

A. She did.

Q. And do you know whether or not she corresponded for herself alone or whether she corresponded for others also?

A. Well, she would go over to my mother-in-law's house [fol. 1622] on Sheriff Street and send letters to the boys from there.

Q. Do you know whether or not your mother-in-law can write English?

A. Very poorly.

Q. Does that bring anything to your mind as to why your wife wrote for your mother-in-law?

A. That's correct.

Q. Was that the reason?

A. That's the reason.

Q. Did your wife Ethel ever tell you at any time that she wrote to Ruthie that a "Relative or a friend will come out to see you at the appointed place sometime in the second or third Saturday of May 1945"?

A. She didn't tell me anything of the sort.

Mr. E. H. Bloch: Now, I wonder whether I could have the sketches that Dave Greenglass turned over to Gold.

(Handed by Mr. Cohn to Mr. E. H. Bloch.)

Q. Now I am going to come back to an incident which you heard testified about here, on June 3, 1945 between the Greenglasses and Gold at Albuquerque, New Mexico. You heard that testimony about that incident, didn't you?

A. I did.

Q. Now before we come to that I would like to ask you one general question covering this period: Did you ever receive from Dave Greenglass or Ruth Greenglass, up to [fol. 1623] June 3, 1945, or at any time thereafter any information concerning the Los Alamos Project, whether it be the names of scientists or whether it be any personnel or whether it be any possible employees there who could have been recruited for espionage purposes or whether or not there were any sketches in connection with that Project, or whether or not there were any descriptions of the sketches? Did you at any time receive any such information from Dave Greenglass or anybody else?

A. I did not.

Q. Did you ever ask him or Ruthie to get you such information?

A. I never asked them.

Q. Now I am going to show you Government's Exhibits 6 and 7, which according to Ruth and Dave Greenglass and also Harry Gold were turned over by Dave Greenglass to Harry Gold in Albuquerque, New Mexico, on June 3, 1945, and after looking at them I want you to tell the Court and jury whether you ever saw any sketches like that, or substantially like that in your life?

A. I never did, sir.

[fol. 1624] Q. Did sketches substantially similar to Government's Exhibits 6 and 7 ever come to your attention from anyone until you heard these things drawn or exhibited in court here?

A. I did not.

Q. Now did there come a time when Dave Greenglass came here to New York City on his second furlough in 1945?

A. Yes, there did come a time.

Q. Do you have any independent recollection as to the month he came here prior to the time you came to court and heard the Greenglasses testify?

A. No, I do not have any recollection.

Q. And after hearing them testify can you tell us with definitiveness what month it was that he came here on his second furlough?

A. No, I could not.

Q. Well, could you tell us from your independent recollection, your own independent recollection, what part of the year it was?

A. I believe it was the fall of the year.

Q. You will not dispute that it was September, will you?

A. Well, I can't dispute any month because I can't recall exactly when he was here.

Mr. E. H. Bloch: Do you think this might be an appropriate time for the recess, your Honor?

The Court: All right: We will take a recess.

(Short recess.)

[fol. 1625] By Mr. E. H. Bloch:

Q. I believe, Mr. Rosenberg, we had come to a point where Dave Greenglass had come back to New York on his second furlough in 1945. Did you ever go to a place where Dave and Ruth lived at 54 Sheriff Street the day or the day after he came back to New York and ask him for information that came out of the Los Alamos project?

A. I didn't ask him for any information that came out of the Los Alamos project.

Q. Now there is testimony here——

Mr. E. H. Bloch: If the Court please, I want to ask one or two questions before I come to this.

Q. I want to ask you something: Did you ever know a man by the name of John Golos?

A. No, I did not.

Q. Did you ever know a woman by the name of Elizabeth Bentley?

A. No, I did not.

Q. Did you ever see John Golos in your life?
A. Never did.
Q. Did you ever see Elizabeth Bentley in your life?
A. I saw her on the stand yesterday.
Q. Before that did you ever see her?
A. Never in my life.
Q. Ever talk to her?
A. No, I did not.
Q. Did you ever have any telephone conversation?
A. I did not.
[fol. 1626] Q. In 1942, with Golos or a woman, answer the phone, and you said "This is Julius"?
A. I didn't make any such telephone conversation.
Q. Did you ever authorize anybody to introduce himself to anybody by the introduction "This is Julius," or "Julius sent me"?
A. I did not.
Q. Are you known amongst your friends as Julie or Julius?
A. Julie.
Q. Now, let us come back to September 1945. Did Dave Greenglass and Ruth Greenglass ever come over to your house and deliver to you, whether at your request or without your request, any information about an atom bomb?
A. No, they did not.
Q. Were they over at your house during that furlough?
A. I believe they were.
Q. How many times?
A. I am not certain how many times. They may have been over once. I am not certain they were over once.
Q. May they have been over twice?
A. Possibly.
Mr. E. H. Bloch: May I have that Government's Exhibit 8, please.
The Clerk: It is impounded.
Mr. E. H. Bloch: I wonder whether the Court will indulge me:
Q. Did you come about Government's Exhibit 8, which [fol. 1627] is impounded? Suppose I try to do it this way.
The Court: All right.
Q. Do you remember Dave Greenglass testifying here

with respect to a cross-section of an atom bomb which he is alleged to have given you on his second furlough here in New York in September 1945 at your house?

A. I remember hearing his testimony about it.

Q. Well, do you remember that there was introduced in evidence a sketch?

A. Yes.

Q. Did you ever see that sketch, even here in court?

A. I didn't see that sketch.

Q. Well, did you ever receive a sketch of a cross-section of the atom bomb from Dave Greenglass at the time he was here on his second furlough in 1945?

A. No, I did not.

Q. Did you ever receive a cross-section of a sketch of the atom bomb from Dave Greenglass or Ruth Greenglass at any time?

A. No, I did not.

Q. There has been testimony here that together with that sketch that was delivered to you at your house there were 12 pages of written or typed matter, explanatory or descriptive matter. Did you ever receive such report or description in writing?

A. I didn't receive any such description or report.

[fol. 1628] Q. Did your wife ever type up at your request any matter as a result of your having received any of that 12-page descriptive matter?

A. She did not type any such thing.

By The Court:

Q. Is your wife a typist?

A. Yes, she is.

Q. Do you have a typewriter at home?

A. That is right.

Mr. E. H. Bloch: I am sorry, your Honor.

The Court: Proceed.

By Mr. E. H. Bloch:

Q. What kind of typewriter?

A. A Remington typewriter, I believe. A portable one, we had.

Q. Do you know whether or not your wife was ever engaged as a means of making a livelihood as a typist from the time you were married to her?

A. The first year of our marriage she did some typing work at the place she worked.

Q. Prior to the time of your marriage do you know whether or not your wife made a living as a typist?

A. She did.

By The Court:

Q. When did you say you were married, Mr. Rosenberg?

A. We were married on June 18, 1939.

Q. What sort of typing did your wife do at the house [fol. 1629] in 1944, if any?

A. I don't recall her doing the typing at the house at all.

Q. How about 1945?

A. 1945, too.

Q. You mean, no typing?

A. No, we didn't do any typing. If I wanted to write a letter for business or for a job or something like that that needed to be typed, I would have her do it for me.

By Mr. E. H. Bloch:

Q. Well, was your wife engaged in any activities on behalf of any organizations, whether they be civil defense organizations or other organizations, during the years of your marriage with her?

A. Yes, she was.

Q. Will you tell us whether she did any typing in connection with that work?

A. She did.

Q. Much?

A. Quite a bit.

Q. What?

A. Quite a bit.

The Court: Of course, you said she did practically no typing in 1944.

The Witness: I was referring to typing for our own personal needs, but she did type—she did typing for the Civilian Defense Council on the east side, and for my union.

Q. What union did you belong to?

A. The Federation of Architects and Engineers.

[fol. 1630] The Court: You mean the union didn't have a typist there?

The Witness: Well, they had but she was a volunteer worker when I was a member of that union.

Q. Were you active in that union?

A. Yes, I was.

Q. And what did you do during most of the years in that union in terms of activity?

A. Well, for a period of time I was chairman of the Federal Civil Service Committee of that union.

Q. And in connection with that activity did you help members of that union with respect to keeping their positions?

A. That is correct.

Q. And did you handle grievance cases?

A. Yes.

Q. For that union?

A. Yes.

Q. Mr. Rosenberg, you see, you lapse into the same habit that some of the others did.

A. I am sorry.

Q. You are lowering your voice. Speak up. Did your wife help you with any of that work?

A. Yes, at times she did.

Q. Was it very often?

A. I would say on and off.

Q. Is that your best answer?

A. That is my best answer.

Q. Now, let us come back to September 1945. Did you [fol. 1631] ever take any material that was ever transmitted to you by Dave or Ruth Greenglass and turn it over to the Russians or anybody else?

A. No, I did not.

By The Court:

Q. Did you know any Russians at that time? By Russians I mean people who were Russian citizens.

A. You mean citizens of Russia?

Q. That is correct.

A. No, I didn't.
Q. Didn't know any at all?
A. None at all.

By Mr. E. H. Bloch:

Q. Did you give to Dave Greenglass $200. in cash when he was here on his second furlough in September 1945?
A. I didn't give him any $200. then.
Q. Did you give him any money?
A. What time, sir?
Q. September 1945.
A. No, I did not.
Q. There came a time when you did loan him some money?
A. That is right, sir.
Q. In what denomination?
A. Five, ten, twenty dollars.

Mr. E. H. Bloch: I will fix the time, Mr. Saypol. I wanted to do this chronologically. I am going to come to it, your Honor.

(Record read.)

Mr. E. H. Bloch: Well, suppose we complete that picture [fol. 1632] now so there will be no doubt about it.

Q. When did you advance or loan any money to Dave Greenglass?
A. 1948 and 1949.
Q. And was that while you were in business with him in the Pitt Machine Products Company?
A. That is right, sir.
Q. Now, look, please, I can't even hear you.
A. I am sorry.
Q. Tell the circumstances of those advances.
A. Well, David kept telling me he needed money for his household expenses and he asked me if I could advance him a few dollars, and if I had some money in my pocket, I split it in half and usually gave him half of that amount. Over a period of two years before he left the Pitt Machine Products there was a total of approximately $300. that I had loaned to him at that time. When we spli!—when he left the Pitt Machine Products and a settlement was made

on the common family debt—I don't know if it has been explained.

Q. Well, you are explaining it now. Now explain it fully.

A. Bernard Greenglass, in the G & R Engineering Company, had loaned to the company moneys that he had borrowed himself from the family, $5,000. When the G & R Engineering Company became the Pitt Machine Products Company, we had paid back to him through the company [fol. 1633] about a thousand dollars, so about $4,000, was still due Bernard Greenglass. When the two boys left the company, we had a common understanding that we would share the family debt, one third each, and when I made the settlement with Dave and Bernard Greenglass, my share became $600, and what David owed me was added on to his share, and we picked one of the members of the family out, whom $600, was owed to, an uncle of my wife's by the name of Abe Feit, and I was responsible to pay him back; and the other relatives, like my mother-in-law and another aunt and uncle, Isidore Feit, David Greenglass and Bernard Greenglass would pay the money back to them.

Q. Now, is it correct to say that you advanced to David Greenglass, in sums of twenties, tens and five dollars, between the years 1948 and '49, so that there was a total advance of approximately $300.; and then after an arrangement was made to pay off this family debt, that $300. was credited to you in allocating the various amounts of responsibility and obligations that each of you assumed to pay off the total debt; is that an accurate statement?

A. That is correct. I would say that the exact figure of what I lent him, I don't remember, but the figure that I had to pay was, I remember, $600.

Q. So that in that way David Greenglass really returned [fol. 1634] to you the moneys that you had advanced to him; isn't that right?

A. Well, he didn't physically return it to me; he just credited me with the money I advanced him.

Mr. E. H. Bloch: Does that satisfy the Court about this transaction, your Honor?

The Court: You may proceed.

Mr. E. H. Bloch: All right, thank you.

Q. Did you, outside of this $300. advance, in 20s, 10s and 5s, in '49, '48 and '49, ever give any money to Dave Greenglass or Ruth Greenglass or loan them any money?

A. No, I did not, sir.

Q. There has been testimony here that at one time—I think it was in '48, I am not sure of that—you advanced $800.—I think Ruth Greenglass so testified—did any such transaction ever take place?

A. No, it did not.

Q. There has been testimony here—we will come to that—that in 1950, in May you gave Dave Greenglass or Ruth Greenglass $1,000. in cash. Did you ever advance that sum or give that sum to them?

A. I did not.

Q. And there has been testimony here that you in the early part of June 1950 gave to Ruth or Dave Greenglass—I think it was Dave Greenglass—the sum of $4,000. in cash——[fol. 1635] Mr. E. H. Bloch: May I have that brown wrapper, please?

Q. —wrapped in Government's Exhibit 10, and I ask you whether or not any such transaction took place (showing to witness)?

A. No, it did not, sir.

Q. Did you ever have any sum of money wrapped in a wrapper, which has been introduced in evidence as Government's Exhibit 10 (showing)?

A. No, sir; I did not.

Q. Does this Government's Exhibit 10—look at it; pull it out—does that mean anything to you?

A. I am sorry. I can't pull this thing out.

Q. Wait. I will do it. Here, I am going to show you this. Does that mean anything to you (showing)?

A. No, sir; it does not.

Q. Now there is Scotch tape there. Did you ever put any Scotch tape on a wrapper like that?

A. No, but I have used Scotch tape.

Q. There is some little clip here—I don't know—with scissors; there is a little notch here, I thought; maybe I am wrong—oh, yes, here it is, a little notch here. Does that mean anything to you (showing)?

A. No, it does not.

Q. Did you ever have this wrapper at any time, so far as you can remember, in your hand, with any sum of [fol. 1636] money in it?

A. No, I did not.

Q. There has been testimony here from the Greenglasses that at the time you advanced $200, or gave Dave $200, when he turned over to you Government's Exhibit 8, which has been impounded—that is the cross-section of the atom bomb, with the descriptive material of 12 pages—that you said to him, in words or substance, "Forget about the moneys that I had given Ruth. Consider that a present." Did any such conversation take place?

A. It did not.

Q. Did any such incident take place?

A. It did not.

Q. Did you ever, while Dave was in the Army at Los Alamos—I believe he testified it was from August 1944 until about February of 1946—ever communicate with Dave through any means?

A. I did not.

Q. Do you remember when Dave got out of the Army?

A. Well, it must have been some time in '46.

Q. Was it early or was it late in '46?

A. It must have been early, because he went into business with me in the spring of '46.

Q. About how long had Dave been in New York after his discharge from the Army, until he went into business with you in the spring of 1946?

A. I can't tell exactly, about a month or two, I estimate.

[fol. 1636A] Q. Now, during the years 1946, 1947, 1948, did you see Dave and Ruth Greenglass?

A. 1946, '47 and '48?

Q. Yes.

A. Yes, I did.

[fol. 1637] Q. Were those occasions frequent or infrequent?

A. Well, at the shop and my mother-in-law's house, I would say they were at a fairly frequent rate.

Q. Now, let us separate the two. You really were in business as associates—as associates?

A. Correct.

Q. I am talking about you and Dave in '46, '47, '48 in the G. & R. Engineering Company and the Pitt Machine Company?

A. Right.

Q. And you saw Dave almost every day, didn't you, in business until about August '49 when he quit?

A. That is right.

Q. Now how about socially, did you see him frequently?

A. Very infrequently.

Q. And where did you usually see them?

A. At my mother-in-law's house.

Q. Did they ever come to visit you?

A. Yes, I believe so but I can't remember exactly how many times or when.

Q. It wasn't frequent?

A. No, it wasn't frequent.

Q. Did you visit them?

A. Yes, at times I did.

Q. Do you know where they were living at during those years?

A. They were living at Rivington Street.

Q. Now, there has been testimony here that about two or three weeks after Dave came out of the Army he had a [fol. 1638] conversation with you and he stated in words or substance and you advised him to go back to Los Alamos and get a civilian job and keep his contacts? Did you ever have such a conversation with Dave?

A. I did not have such a conversation with him.

Q. There has been testimony here by Dave Greenglass and Ruth Greenglass that sometime during the period 1946 to 1949 you wanted—you conveyed to Dave your ideas about his continuing his education and going to college and getting a degree; do you remember that testimony?

A. Yes, I heard the testimony.

Q. And I think he also testified that you wanted him to go to certain universities to keep up the contacts that he had made at Los Alamos; do you remember that?

A. I remember that testimony.

Q. Did any such conversation take place?

A. It did not take place.

Q. During the years or during those years was there any discussion about Dave's education?

A. Yes, there was.

Q. Now tell the Court and jury just when that took place and what was said?

A. During the existence of the Pitt Machine Products, David, decided to go to night school and—under the G.I. Bill so he could get some subsidies from the Government—and he took an early program and he had to leave the [fol. 1639] shop for three nights a week, two or three nights a week, I don't recall, at about 3 o'clock. And he was foreman of the shop and he had to supervise the employees and I came in in the shop on a number of occasions and noticed that there wasn't anybody there to supervise the employees and I got hold of Dave the next day and I says "Look here, Dave, you are shirking on the job. You are not doing your work. The fellows aren't getting stuff out," and we had discussions over that, and we had arguments about that, and finally David quit school because of that.

Q. Is it fair to say that you objected to his continuing his education at that time?

A. I certainly did.

Q. Was Ruthie present at that time that you had any of these discussions about his continuing at night school?

A. She was present on a number of occasions.

Mr. Saypol: That is not responsive, if the Court please.

The Court: I take it on a number of occasions during the course of the discussions.

The Witness: That is right, sir.

Q. Is that right?

A. That is right.

Q. Try to confine yourself—we will come to other matters [fol. 1640] but try to confine yourself to the discussion about his education.

A. To school, yes.

Q. And can you remember anything now that Ruthie said during any one of these discussions?

A. Yes. Ruth said "You are taking advantage of my husband. After all you have an education, he should have

an education and he is contributing more than you are to the business anyway, because he produces the work and you just get it, and if he gave you four hours a day, that is enough for you. You should let him go to school.

Well, I did not see eye to eye with her on that and we argued about it.

Q. Did you ever mention to Davey that you would support him or get the Russians to support him if he continued his college education.

A. I did not.

Q. Did you ever mention to Davey that he should go to M.I.T.—do you know what M.I.T. is?

A. Sure.

Q. What does that mean?

A. Massachusetts Institute of Technology.

Q. Or Chicago University?

A. I didn't suggest him to go to those places. It was very unlikely that I could suggest it because he probably couldn't get into those places. He didn't have the qualifications.

Q. Did you ever tell Davie or Ruth during the years 1946 to 1949 or at any time that you had a number of [fol. 1641] students attending American universities who were being subsidized by the Russians and who were part of your boys or something like that?

A. I didn't tell him anything of the sort.

Q. Did you have any control over students or did you have any—or did you ever make any arrangements with respect to students attending American universities or scientific schools where you subsidized them in whole or in part, or received money from the Russians to subsidize them in whole or in part?

A. I didn't do anything of the sort.

Q. There has been testimony here that you told Dave Greenglass and Ruth Greenglass—and I am not sure whether it is both or one but at any rate there has been testimony from one or both of the Greenglasses that you told them that you have contacts in your espionage work up-State and in Ohio, and I think they mentioned specifically Cleveland. Did you ever have any such conversation with him?

A. I did not.

Q. I think he also mentioned in connection with up-State contacts, G.E. in Schenectady.

Did you have any contacts with any employee in Schenectady in connection with any business of yours, whether it was—any business of yours?

A. No, I did not have any contact with any employee of G. E. in connection with any business.

[fol. 1642] Q. You knew——

The Court: Excuse me.

By The Court:

Q. Did you know anybody working there?

A. Sure I did.

Q. Whom did you know working there?

A. Morton Sobell.

Q. How long had you known Sobell?

A. I went to school with him.

Q. And you had known him continuously right up until the present day?

A. Well, sporadically for a time and then——

Q. Rather close?

A. Well, he was a friend of mine.

Mr. E. H. Bloch: I will come to that, your Honor. I will try to go into that more in detail.

By Mr. E. H. Bloch:

Q. Were you ever in Schenectady in your life?

A. No, I was not.

Q. Were you ever in Cleveland?

A. No, I was not.

Q. Now there has been a testimony here that sometime in the late part of 1947 there was discussion in your shop at Pitt Machine Products Company where you were there and Dave was there and Bernie was there—Bernie Greenglass, [fol. 1643] that is, Dave's brother—about some Sky Platform Project and you said that you got that information from one of your boys.

Was there a discussion about some Sky Platform Project?

A. Well, there wasn't any discussion about some Sky Platform Project but I would like to explain that.

Q. Well, do it?

A. If you don't mind. I don't remember the specific incident but at that time in the Popular Science magazines and in the newspapers there was some talk about the Germans had done some work on some kind of suspended lens in the sky to concentrate the rays of the sun at the earth, and that is what I believe was the discussion we might have had at that time. Greenglass used to read the Popular Mechanics and the Popular Science and he always talked about things like that at the shop.

The Court: Did you read it too?

The Witness: No, I didn't.

Q. Do you remember who initiated the discussion?

A. I can't recall.

Q. Did you ever say at that time that you got the information from one of your boys?

A. I did not.

Q. Now, there has been testimony here that you told Dave Greenglass at some time—and I don't know just [fol. 1644] when but at any rate there has been testimony that you disclosed to him the method by which you communicated with the Russians and that you said you used to communicate with him through a moving picture theatre where there was an alcove and certain microfilms was left in the alcove and they would pick it up or you would pick it up—in substance, something about a motion picture alcove where information was transmitted.

Did you ever have any such conversation?

A. I didn't have any such conversation.

Q. Did you ever go to any motion picture theatre and put anything like microfilm or any other material in a place like that so that somebody else could get it?

A. No, I didn't do anything of that sort.

Q. Whether it be the Russians or anybody else?

A. No, I did no such thing.

Q. Incidentally, I think it was Miss Bentley who testified that after Golos died she had contact with a man connected with the Russian Consulate by the name of Gromov—I think that was it—G-r-o-m-o-v.

Did you ever know such a man?

A. No, I did not.

Q. Did you ever tell Dave Greenglass that you or your crowd or your boys or your friends engaged in espionage [fol. 1645] work, had gotten information about the mathematics on atomic energy for airplanes?

A. I did not.

Q. Now let us come down to 1950. There has been testimony here that after Dr. Klaus Fuchs was arrested, you came over to see the Greenglasses, and, in substance you told them that Dave ought to leave the country.

Did any such conversation take place?

A. It did not.

Q. He testified, I believe—and when I say "he" I mean Dave Greenglass, testified that at that time you took a walk with him in some park—was it Hamilton Fish Park?

A. That's what he said.

Q. Did any such walk occur in which such a type of conversation that I have described take place?

A. No, it did not take place.

Q. Did you subsequently take a walk with Dave Greenglass in that park?

A. Yes, I did.

Q. Well, we will come to that.

Did you tell Dave Greenglass that you had a friend by the name of Joel Barr who was engaged in espionage work with you?

A. Never told him that.

Q. Did you tell Dave Greenglass that Joel Barr left this country sometime in '47 to study music in Belgium?

[fol. 1646] A. Well, Mr. Bloch, before Joel Barr left this country he was at my shop and he told both Davey and me that he was going overseas. He told everybody present there.

Q. How long have you known Joel Barr?

A. I knew Joel Barr since college days.

Q. Since when?

A. College days.

Q. Was he a classmate of yours?

A. Yes, he was.

Q. And after Joel Barr and you were graduated from college, did you continue a friendship with Joel Barr?

A. Yes, I did.

[fol. 1647] Did he come to visit you in your home?

A. Occasionally he did.

Q. Did you visit him at his home?

A. Yes, I did.

Q. Where did Joel Barr live?

A. Well, at the time I visited his home he lived uptown, Manhattan, on 97th Street, on the west side.

Q. Did Joel Barr ever live in Greenwich Village?

A. Yes, he did.

Q. Did you ever visit him when he lived in an apartment in Greenwich Village?

A. Yes, I did.

Q. Now, did there come a time when Joel Barr came around to your shop to do some work at your shop? When I say your shop I am referring now to the Pitt Machine Products Company.

A. Yes, there did come a time.

Q. What kind of work did he do?

A. Well, he was building an amplifier for himself.

Q. When you say an amplifier, for what kind of an instrument?

A. For a record player.

Q. Was Joel Barr a musician?

A. He wasn't a musician, but he was interested in composing.

Q. And when you visited Joel Barr at his home, did Joel Barr usually play the piano or play phonograph records or have soires where music was played?

A. Right; he had musicals.

[fol. 1648] Q. He liked music?

A. That is correct.

Q. Did there come a time when Joel Barr told you in Dave's presence that he was going to Europe to study music?

A. That is correct.

Q. Can you tell us, to the best of your recollection about when that was?

A. I would place it approximately the end of '47 or the early part of '48.

Q. Did you subsequently find out that Joel Barr did go over to Europe?

A. Yes, I did.

Q. From whom did you get that information?

A. Well, I had business dealings with the Barco press. The firm is owned by Joel's older brother; and his other brother, his younger brother, worked at the place.

Q. What are the names of Joel Barr's brothers?

A. I only know the first name of the younger brother. His name is——

Q. What is his name?

A. —Arthur Barr.

Q. All right, did you see Arthur Barr?

A. Yes.

Q. After 1948?

A. Yes, I did.

Q. Did he tell you where Joel was?

A. He did.

Q. What did he tell you?

A. Well, when I saw Arthur Barr, I was at his place of business to install a machine I had made for them, for the Barco Press.

Q. Is that in connection with the Pitt Machine business?

A. That is correct; and on that occasion he told me [fol. 1649] that Joel was in Europe. I don't recall exactly where he was at the time but at one time he mentioned to me that he was—I don't remember the exact country; I think it was Sweden.

Mr. Saypol: Maybe we can have the brother here. I will object to the hearsay. I have been very liberal here and haven't objected.

The Court: Have you about finished with that?

Mr. E. H. Bloch: All right, Mr. Saypol.

Q. At any rate, were you informed by Joel's brother that Joel was in Europe?

A. That's right.

Mr. E. H. Bloch: Just this last question, Mr. Saypol.

Mr. Saypol: Still hearsay, if the Court please.

Mr. E. H. Bloch: All right, I will withdraw it.

Will you bear with me for one second, your Honor? I am just trying to decipher my notes.

Q. Now, there has been testimony here by the Greenglasses that somewhere around 1950, in connection with your telling Dave Greenglass to leave the country, that you told him that Harry Gold was Fuchs' contact in the United States, and since Greenglass had direct contact with Gold that eventually—and this is paraphrased—the trail may lead to Dave Greenglass and he ought to leave the country. Did you ever say anything like that, in those words or [fol. 1650] in substance?

A. I did not.

Q. Do you remember whether you were in the house of the Greenglasses in February 1950?

A. I don't remember.

Q. When did Dave Greenglass——

Mr. E. H. Bloch: Before I ask that, I wonder whether the Government will, within the next few minutes, get me the records of the Pitt Machine Products Company.

Mr. Kilsheimer: Do you want everything?

Mr. E. H. Bloch: I think so. I mean you know, what you had here the other day, the stock books.

Mr. Cohn: We will bring the whole thing.

The Court: Are you leaving this subject now?

Mr. E. H. Bloch: I think I can cover a few moments of it before we come to any documentary material, your Honor.

Q. Did there come a time when Dave Greenglass left the Pitt Machine Products Company?

The Court: Before you answer that question:

By The Court:

Q. Did you have any discussion with Greenglass about his going to Mexico?

A. I didn't have any discussion with Greenglass about going to Mexico, but at one time the word Mexico was mentioned. If you want me to discuss that——

[fol. 1651] Q. When?

A. —incident now.

Q. Just tell me when.

A. In the middle of May.

Q. In the middle of May?

A. Right.
Q. Tell us how that came about.

Mr. E. H. Bloch: Just pardon me, if the Court please. I know that the Court's question is absolutely proper and relevant. What I was doing here is going along chronologically. There were some meetings between Greenglass and this witness prior to this incident, and I think the incident——

The Court: I thought you had touched on it.

Mr. E. H. Bloch: No. You see what I did, I went to February 1950. Now I am going to try to go into the business relationships of the parties at that time, because chronologically it fits in.

The Court: Go ahead.

Mr. E. H. Bloch: I hope the Court will bear with me. I am going to get to that. I am going to cover every possible incident that I can.

The Court: All right.

By Mr. E. H. Bloch:

Q. Now, did there come a time when Dave Greenglass left the Pitt Machine Company?
A. Yes, there did.
[fol. 1652] Q. And what year was that?
A. In 1949.
Q. And during that year were you or Dave Greenglass or Bernie Greenglass drawing your regular drawings from the Pitt Machine Products Company?
A. No, we were not.
Q. Was business bad?
A. It was bad.
Q. Was it very bad that year?
A. Very bad.
Q. Did there finally come a time when Dave Greenglass told you he can't make a living, he has to get out?
A. Right.
Q. And did he go out?
A. He did go out.
Q. And is it also true that Bernie Greenglass a few weeks later also got out of the business?

A. Yes.

Q. Did you remain in the business?

A. I did.

Q. Was Dave Schein whom you have talked about yesterday still interested in Pitt Machine Products Company when Davey left the business?

A. Yes, he was.

Q. And was the stock ownership of the Pitt Machine Products Company the same in the latter part of 1949 when Dave left the business or August 1949 when he left the business as when had originally incorporated and the stock was allotted to the various stockholders?

A. It was the same.

Q. Now, did you have any conversation with Dave about the disposition of his stock?

A. I had many conversations about the disposition of his stock.

[fol. 1653] Q. I want you to tell us when these conversations about his stock started?

The Court: Well, I tell you, you are going awfully far afield. You brought this out from Greenglass on cross-examination as I remember, and without having all the discussion, I think the purpose is known to me, what you are trying to get at. Why don't you get to the main point? I don't want all the discussion and so forth, and so forth, about Pitt Products.

Mr. E. H. Bloch: The difficulty here is, your Honor, that the discussions about the stock are so interrelated with the main substance——

The Court: All right. He had discussions over a period of time. He can say what they related to. I am going to let him characterize it.

By Mr. E. H. Bloch:

Q. I am going to ask you some general questions and we are going to cover this very quickly.

Were you negotiating to get an assignment of Dave Greenglass' stock in 1949 after he left?

A. Yes, I was.

Q. And did there come a time when in the latter part of 1950 when there was an assignment written out for him to sign whereby he was going to assign that stock to you?

A. Yes, there was.

[fol. 1654] Q. And was there a discussion about price?

A. There certainly was.

Q. Could you agree with him about price?

A. No, we couldn't.

Q. Did you finally agree with him about at least the amount that he was to get?

A. That is right.

Q. And was there left in abeyance how that amount was to be paid?

A. That is correct.

Q. Did you get a written assignment and delivery, a written assignment of the stock by Dave and a delivery of that stock in January 1945?

A. No, I did not.

Q. I am sorry, January 1950?

A. No, I did not get it at that time.

Q. And did you continue to have discussions with him about that right from January 1950 up to May 1950?

A. I had continuous discussions with him.

Q. Did you finally agree with him on a price of $1000?

A. Yes, I did.

Q. And is it fair to say that you didn't want to give him the $1000. in cash or give him a promissory note for that $1000. or agree to bind yourself in specific installments to pay up that $1000., and both Dave and Ruthie insisted on either getting cash or getting a note or getting some written evidence of the indebtedness?

A. That is correct.

[fol. 1655] Q. From you, is that correct?

A. Yes.

Q. Does that bring us up to about May 1, 1950?

A. That is right.

Q. Now, in or about May 1, 1950 did you finally get a delivery of Dave Greenglass' common stock in Pitt Machine Products Company together with his written assignment on the reverse side of the certificate?

A. I did get that.

Q. You didn't see that, but that has been introduced in evidence.

Mr. E. H. Bloch: Your Honor, I assume the jury will understand.

May I just make a statement to the jury that I am referring now to the certificate of stock which was issued to Dave Greenglass and which was subsequently endorsed by——

Mr. Saypol: Just a moment. That is not in evidence I am told.

The Court: It is not in evidence?

Mr. Saypol: No.

Mr. E. H. Bloch: No, Mr. Saypol, I think you are mistaken. There isn't in evidence his resignation but I think the stock was admitted in evidence.

The Court: It was marked for identification.

[fol. 1656] Mr. E. H. Bloch: Then I beg your pardon.

By Mr. E. H. Bloch:

Q. Well, at any rate Government's Exhibit——

Mr. Saypol: No "at any rate." I would rather——

Mr. E. H. Bloch: We have it here.

Mr. Saypol: I would rather not have counsel's explanatory statements to the jury.

The Court: I gave him permission to do that.

Mr. Saypol: Oh, I beg your pardon. I didn't know that.

By Mr. E. H. Bloch:

Q. At any rate, I show you Defendant's Exhibit C for identification and ask you to look at it and after looking at it tell us whether there came a time when you actually got delivery and that assignment of the stock from Dave Greenglass?

A. There did come a time.

Q. When was it?

A. A day or so before the beginning of May.

Q. And at that time did you also procure from him——

Mr. E. H. Bloch: If the Court please, may I offer the certificate in evidence now? I understand that it is really cumulative.

The Court: Go ahead.

Mr. Saypol: It is irrelevant, if the Court please.

[fol. 1657] The Court: Well, all right.

Mr. E. H. Bloch: I will tie it up, Mr. Saypol.

The Court: You may offer it. You are taking a very ponderous route again. I thought you were beginning to clean it up with that question and I was going to commend you for getting to this subject. I would rather get back to the main topic.

Mr. E. H. Bloch: I am leading right into it now, your Honor, these conversations in May. All that is necessary is certificate No. 2.

(Addressing clerk)

(Marked Defendants' Exhibit C-1 in evidence.)

[fol. 1658] Mr. E. H. Bloch: I would like to ask a question, your Honor, but I know Mr. Saypol might object, and I am trying to speed it up. I will ask the question.

The Court: This is the first time I ever heard a lawyer worry about asking a question before asking it.

By Mr. E. H. Bloch:

Q. Did you have heated discussions with both Dave and Ruth Greenglass about the transference of this stock?

A. I did.

The Court: You see, he didn't object.

Mr. E. H. Bloch: I am surprised.

Q. I show you Defendants' Exhibit D for identification, and ask you whether you received that paper from Dave Greenglass at the time you received an assignment and delivery of his stock?

A. I did not.

Q. How long after you received the assignment of the stock did you receive this resignation which has been marked Defendants' Exhibit D for identification?

A. I can't tell exactly the number of days but it was a number of days after I made the arrangement with David Schein to buy his share of the stock.

Q. Now, did you on May 1, 1950, contract to purchase the stock of Schein in Pitt Products Machine Company?

A. Yes, I did.

[fol. 1659] Q. And did you pay Schein $1,000. in check or certified check that day as a deposit for the purchase of that stock?

A. I did.

Q. Did you agree to pay a total of $5500. for that stock?

A. That is correct.

Q. And is it accurate to say that the $4500. balance was to be paid off by you in instalments of $160. a month?

A. That is correct.

Q. And was your obligation that you were assuming to David Schein one of the reasons why——

Mr. E. H. Bloch: Withdrawn.

Q. Did you tell Dave during this period that one of the reasons you did not want to give him cash and could not afford to give him cash was because you had to pay off Schein and had to give him some money on account?

A. That is correct.

Q. As a matter of fact, did you have any cash of any substantial amount left in your bank account after you paid Schein $1,000 on account of his stock?

A. I did not.

Q. Did you come around to Dave's house in order to try to get an assignment of that stock?

A. Yes, I did.

Q. And did you come around to Dave's house for the purpose of getting that resignation?

A. I did.

Q. As an officer and director of the corporation?

A. I did.

[fol. 1660] Q. Was this in May 1950?

A. I believe that is when it was.

Q. Now, did you see Dave later that month?

A. Yes, I did.

Q. Tell us the circumstances.

A. Well, about the middle of May, I can't tell the exact date, David came to my shop one morning. He came into my office. I was sitting in my office, and he said, "Come on outside, I want to talk to you."

I said, "Look, Dave, I got to conduct my business. Let us talk here."

He said, "No, it is important. Let us go outside."

Well, I walked outside of the shop with him.

He said, "Let us walk into the park."

Q. Now, when you say park, to what park are you referring?

A. Well, right opposite my shop on Houston Street is the Hamilton Fish Park, and in order to enter the park on the Pitt Street side, the direction we were headed for, we walked across Houston Street, down the street, made a left turn and walked a quarter of a block and walked into the park.

Q. Tell us about the conversation you had.

A. Dave said to me as follows: "Julie, you got to get me $2,000. I need it at once."

[fol. 1661] I said, "Look, Dave, you know the arrangements I made with you. I obligated myself to Dave Schein. I gave him a down payment of $1,000. I have no cash left. You can't get blood out of a stone. I just don't have the money. What do you want it for?"

He said, "I need the money. Don't ask me questions."

I said, "Dave, you are getting very excited. What is the matter with you?"

Q. Was he excited?

A. He was very excited. So he said, "Well, if you can't help me like that maybe you can do something else for me."

I said, "What is it? If I can help you I will."

He said, "Will you go to your doctor and ask him if he would make out a certificate for a smallpox vaccination?"

I said, "Why don't you go to your doctor?"

He said, "Don't ask me that. I can't do it."

Q. Was Ruthie present at this time?

A. No, she was not. And I said, "It is highly irregular, but I will ask my doctor if he will do that."

And he said, "Don't tell him who it is for, and also, incidentally, while you are talking to him, ask him if he knows what kind of injections are required to go into Mexico."

[fol. 1662] I said, "Dave, are you in trouble or something?"

He said, "Don't ask me anything about it. You got to do this for me. If you can't give me the money I need, at least do this for me."

By The Court:

Q. Now, up to that time you had been having some heated arguments, as you call it, heated arguments with David, and I take it you were not particularly friendly with him then, were you?

A. Well, I would say this: that I was not antagonistic to him. He was my wife's brother.

Q. But you were not friendly. That friendship had been strained?

A. Yes, there was strain.

Q. Can you think of any reason why on this occasion he would come to you and confess to you and ask you to help him out instead of going to somebody else?

A. I have no idea why he came to me.

By Mr. E. H. Bloch:

Q. But he did come to you?

A. He came to me.

Q. As a matter of fact, as a result of that conversation did you call Dr. Bernhardt?

A. Yes, I did call Dr. Bernhardt.

Q. Now, I want you to tell this Court and jury——

[fols. 1663-1664] By The Court:

Q. You say you didn't press him for information about Mexico?

A. I pressed him but he wouldn't give me any and he was very disturbed and agitated.

Q. Did you call his wife to try to find out what was wrong?

A. No, I didn't call his wife because his wife had been sick with burns. I don't know if she was aware of his trouble.

Q. You didn't attempt to ascertain from any other source or have anybody else like your wife talk to her brother to find out what was wrong?

A. Well, that night when I came home I told my wife about the incident and my wife told me, "What is the matter? Is Ruthie nagging Dave again for money?"

I said, "No, it doesn't seem to be that. He must be in some trouble. I don't know what it is."

And I recall at that time in my mind the incident—the instant he told me what happened to him in February when the FBI had come around to visit him and question him about some uranium. I thought maybe it had something to do with that or had something to do with a conversation Ruthie had with me many years back.

Q. Well, up to that time had your friend, Mr. Sobell, told you that he was contemplating going to Mexico?

A. No, sir.

[fol. 1665] Q. How long prior to May, the latter part of May of 1950 had you been getting injections from Dr. Bernhardt?

A. Well, the injections started in early March.

Q. Tell us what you said to Dr. Bernhardt and what Dr. Bernhardt said to you when you called him up?

A. Well, we had regular appointments for Tuesday or Thursday of the week. In order to ascertain that the doctor would be home at night and not out on a call I would call him. So I called him that night and said, "Can I come over, Dr. Bernhardt?"

He said, "Yes, the other patients are going to be over tonight."

Q. And did you go over to Dr. Bernhardt's office that night?

A. Not his office; his home.

[fol. 1666] Q. I mean his home, I am sorry. Now, I want to ask you this question: Did you have any telephone conversation with Dr. Bernhardt in which this whole question of innoculation for Mexico, as testified to by Dr. Bernhardt took place?

A. No, I didn't have any telephone conversation with him.

Q. Did you go over to his home later?

A. Yes, I did.

Q. Who was there when you got there?

A. Well, there were other patients present, who had preceded me in his house.

Q. Can you mention one of the other patients?

A. That was a patient by the name of Schreier.

Q. And does Mr. Schreier live in Knickerbocker Village?

A. Yes, he does.

Q. Now, what room in Dr. Bernhardt's home did you come into that evening?

A. Well, it is a living room.

Q. And is that the same room that you had come in from March on, to get your injections?

A. That is correct.

Q. Incidentally, had you also been treated by Dr. Bernhardt for some flu or strep throat that you had earlier that year?

A. That is right; on two occasions.

Q. At any rate, on this night Mr. Schreier was there?

A. Right.

Q. Were there any other people there besides Mr. [fol. 1667] Schreier and the doctor?

A. There was someone else present, but he left very early. I don't remember the person's name.

Q. Do you know whether Mr. Schreier also gets hay fever injections?

A. He does.

Q. Now, when you got there, did you get your hay fever injection?

A. That is correct.

Q. What was the practice when you got your hay fever injection, in connection with Dr. Bernhardt, in terms of how long you stayed there after you got your injection?

A. The patient would have to wait for a half hour to three-quarters of an hour to see if he had a reaction to the injection.

The Court: What has that got to do with this thing?

Mr. E. H. Bloch: I am coming to it.

Q. Now, does that refresh your recollection about a conversation that you had with Dr. Bernhardt about Mexico?

A. Yes, it does.

Q. Tell us how that happened.

A. Well, when I was in the house there, Mr. Schreier and Dr. Bernhardt were talking about vacations in general, and they were discussing a vacation the doctor had had on previous years at Cape Cod, and they had a large photographic album out, and they were looking at the pictures and they passed them to me and we all discussed it; and

[fol. 1668] we discussed other vacation spots, Miami, the mountains.

The Court: I still ask what this has to do with the case?

Mr. E. H. Bloch: I am trying to get him to come to the conversation I think the Court wants.

A. (Continuing) Then I asked Dr. Bernhardt about vacations in Mexico, what are the requirements? And he told me that you need to have a smallpox injection. Well, I asked him would he make out a certificate for a smallpox injection for somebody he didn't vaccinate. He said, No, he would not. I didn't discuss the matter with him any further, but he did give me some detailed understanding of what a person would have to be injected for if he wanted to go to Mexico.

Q. Now, just two questions in connection with that: At the time the doctor told you that was Mr. Schreier present?

A. No, he was not; he had left already.

Q. Next question: Did you ask the Doctor about Mexico because of the conversation that you had had with David earlier?

A. Yes, I did.

Q. But you didn't tell it to the doctor?

A. Tell the doctor what?

Q. That it was a friend of yours who was contemplating or a relative, who was contemplating going to Mexico?

[fol. 1669] A. I didn't tell him "a relative." I just told him "a person."

Q. Well, you said you had been discussing vacation spots, and then you asked him about Mexico.

A. That's right.

Q. Was that done to make him believe you were contemplating going to Mexico?

A. No, because he asked me, when I asked him about the vaccination, if it was for me, and I said, "You know, Doc, it is not for me. I have been vaccinated a few years ago," when they had that big vaccination drive.

Q. Now, there has been testimony here by Dave Greenglass and Ruth Greenglass that on May 23rd or May 24th, 1950, you came over to their house and you showed them, one morning—I think they said early morning, the 24th

of May—and you came in with a copy of the Herald Tribune and you showed them a photograph of Harry Gold; did any such incident take place?

A. No, it did not.

Q. They also testified that at or about that time you told Dave that he ought to get out of the country and you gave him $1,000. in cash; did you ever give him that money?

A. I didn't give that money.

By The Court:

Q. Nor did you give him the $4,000. as he testified?

[fol. 1670] A. No, I did not, sir.

By Mr. Bloch:

Q. As a matter of fact, did you have in cash, or in your checking account, a thousand dollars?

A. At what time?

Q. The latter part of May?

A. No, I don't believe so. Later on I had some money in my checking account.

Q. Did you have some bonds of the United States Government at that time?

A. Yes, I did.

Q. Do you remember when you cashed some of those bonds?

A. I know it was sometime after I made the agreement with Dave Schein, because I cashed those bonds to have the payments in the bank available to him.

Q. When you cashed those bonds from the United States Government, whether it was in May or it was in June, did you deposit the proceeds that you had obtained as a result of the sale of those bonds in your bank account?

A. Yes, I did.

Q. Did you draw any checks from your bank account, in any large denominations, outside of the $1,000. check to Dave Schein, in the months of May or June, 1950?

A. I did not.

By The Court:

Q. Well, Mr. Rosenberg, if it was the purpose that Mr. Greenglass had testified it was for, then it would be fair

[fol. 1671] to suppose that the money would never come out of a bank account; isn't that so?

A. Well, it is not for me to say, sir.

The Court: All right.

By Mr. Bloch:

Q. Well, did you, at any time, get any money from anybody, in these denominations of a thousand and $4,000.?

A. No, I did not.

Q. Did you ever see $4,000. at one time?

A. No, I didn't.

Q. In your life?

A. No.

Q. Now, after you saw the doctor——

The Court: You say you have never seen $4,000.?

The Witness: Not in one lump sum.

The Court: Oh, I see.

Q. Did you see Dave Greenglass a few days after you had spoken to the doctor about the Mexican vaccination?

A. Yes, I did.

Q. Tell us the circumstances of that.

A. Well, I don't re— a couple of days after that, on my way to work, I stopped in and told him the doctor had said he wouldn't give him the vaccination, the vaccination certificate, and he said he would take care of it himself. That is all that happened at that time.

Q. Now, where did this conversation take place?

[fol. 1672] A. It took place in his house.

Q. Was Ruthie there?

A. I don't remember.

Q. Did you have any further conversations with Dave Greenglass after you told him that the doctor, your doctor, would not give a phony certificate?

A. Yes, I did.

Q. Tell us about those and try to fix the time.

A. Well, I don't know exactly how many days after that first walk we had in the park it was, but it may have been a week or ten days or 15 days, I don't recall exactly how many, when I received a call from David Greenglass and he said "It is important. I would like to see you. Come over."

Q. Where did you get that call?
A. I got that call at my shop.
Q. When you say a call, do you mean a telephone call?
A. Telephone call, right.
Q. All right.
A. And he said, "Come over, I want to see you."
Q. Just one question: How far was 265 Stanton Street, where Dave and—
Mr. A. Bloch: 265 Rivington Street.
Q. 265 Rivington Street, where Dave and Ruthie lived at that time, from your shop at 267 East Houston Street?
A. I would say about three or four blocks.
Q. Now, did you go over there in response to that call?
[fol. 1673] A. Well, a couple of nights later on, I don't remember exactly whether it was one night, two nights or three nights, after supper one — I went over to his house.

Mr. Saypol: I would like to have the time fixed, if I may, please.

A. (Continuing) It was in the evening.

The Court: Will you fix the time?
Mr. Saypol: Will you be good enough to have him fix the time?
Mr. E. H. Bloch: I am sorry.

Q. Can you fix the time with more precision than you have up to now? You said, I think, a couple of days, a week, or even 15 days later.
The Court: Later than what, later than the first conversation?
The Witness: Yes.
The Court: And they talked about——
The Witness: The middle of May.
Mr. E. H. Bloch: When he told him that the doctor would not give him a phony certificate.
The Witness: I would say it was near the end of May then.

By The Court:

Q. Well, now, during that period of about two weeks, what did you do to try to find out what trouble David [fol. 1674] Greenglass was in?

A. I didn't do anything.

Q. You didn't press him or didn't have anybody try to find out?

A. No, I didn't press him.

By Mr. E. H. Bloch:

Q. Did you discuss it with your wife?

A. Yes, I did.

Q. Did you describe already what you said to your wife?

A. I did.

The Court: Is that all you did?

The Witness: That's right.

A. (Continuing) Then I went over that evening to his house and I knocked on the door and Dave pushed himself out of the house, and he pulled me inside and said, "Julie, I can't talk to you now. I have got some company here." He says, "Either I will get in touch with you or you will get in touch with me and we will get in touch with each other that way."

Q. Did you ever go into his house after that night?

A. No, he didn't want to let me in his house that evening.

Q. Is that the entire incident of that evening?

A. That was the entire incident.

Q. Did you go home after that incident?

A. I went directly home.

Q. Did you speak it over with Ethel?

A. Yes, I did.

[fol. 1675] Q. What did you tell her? What did she say?

A. I told Ethel, that "your brother is in some trouble; he is acting peculiar and strange and I don't know what to do about it; and you know that he has had it in for me and our relations haven't been the best"; and she prevailed upon me to see if we can do something to help him out, if he needs some help.

By The Court:

Q. You mean, you acknowledged the fact that you had not been friendly?

A. No, of course.

Q. And despite that fact, when Greenglass came to you for help, you didn't say to him, "Why come to me? We

haven't been friendly. Go to some other relative or to some other member of the family"?

A. Well, we weren't at each other's throat. He was my wife's brother.

Q. In other words, there hadn't been such a wide rift as yet?

A. No, there hadn't been.

By Mr. E. H. Bloch:

Q. Now, after you conversed with your wife about this incident, where he wouldn't let you in the house, did you see him again?

A. Yes, I saw him again.

Q. How did that come about?

A. Well——

Q. Mr. Rosenberg, I am sorry to interrupt.

A. He called me——

[fol. 1676] Q. Wait. Will you keep your voice up?

A. Yes, I will.

He called me at the shop and told me——

Mr. Saypol: I would like to have dates fixed, if possible.

Q. Try to fix the date.

A. Well, it was a number of days after the time I went to his house.

Q. Would you say this was still in May, or would you say this was already in June?

A. It might have been the first week in June or the end of May.

Q. You are not sure?

A. I can't fix it exactly, if it was a day or two in June or a day or two in May.

[fol. 1677] Q. Is that the best you can fix the time?

A. That is the best I can recollect.

Q. All right, now tell us.

A. He called me up and said that "It's very urgent, I have got to see you. Can you come over to my house?" And I told him I couldn't do it right then but if I have a chance, maybe the next morning on my way to work I will drop in to see him, and a day or two after that—I don't remember if it was the next day or the day after, I dropped

in at his house. I walked up—I walked up to his floor and knocked on the door, and when I came in he was already up. He did not have his shirt on, he hadn't washed and he did not have any breakfast, and he says "I will just put my shirt on and we will go downstairs without having any breakfast."

Q. Was Ruthie there?

A. Yes, Ruth was there.

Q. Can you fix the time of the morning it was?

A. Well, I would say it was somewhere about 8 o'clock because that is about the time I would get towards the shop.

Q. Now did you have any conversation with Dave and Ruthie in the house?

A. No, we did not.

David wanted us to go right out of the house.

Q. Did Ruthie say anything to you?

A. She said "Don't be too long."

[fol. 1678] Q. Did you notice anything about Ruth's reception of you in terms of coolness or warmth?

A. Well, she was cool.

Q. How about Davey?

A. Dave was very excited. He was pale and he had a haggered look on his face.

Q. Now, at that time did Ruthie already give birth to a child?

A. Yes, I believe she did.

Q. Did you see the child?

A. I glanced at the child.

Q. Did you then go out of the house with Davey?

A. I did.

Q. Tell us what happened?

A. Well, Davey directed us towards the drive, the East River Drive. He didn't take a direct route. He went at a diagonal method. In other words, instead of going down Rivington Street he—I believe we turned the corner—I don't remember the exact route but I think we were going up Columbia Street and as we were walking up the street he noticed some friends of his across the street and he said "Walk on ahead slowly, Julie and I'll—I want to talk to these people for a minute and I'll catch up."

About a half block later he caught up and we proceeded

toward the East River Drive. I said to Dave at this point "You look very agitated. Calm yourself, take it [fol. 1679] easy. What's troubling you"? And he said "Julie, I am in a terrible jam." I says "No— I says "I realize you have been asking me for money, you have been telling me to go to my doctor for a certificate, you have been talking about Mexico. What is the trouble, Dave?"

He said "I can't tell you everything about it. All I want you to do for me, Julie, is I must have a couple of thousand dollars in cash." I says "David, I don't have the money on me, I can't raise that kind of money."

He says, "Julie, can you borrow it from your relatives?"

I says, "No, Dave, I can't do that."

He says, "Can you take it from the business for me?"

I says, "Dave, I cannot do that."

"Well, Julie, I just got to have that money and if you don't get me that money you are going to be sorry."

I said, "Look here, Dave, what are you trying to do, threaten me or blackmail me?"

Well, he was very excitable at this time, he was puffing and I saw a wild look in his eyes, and I realized it was time to cut this conversation short. We had been walking down the Drive near about Houston or Stanton Street and I [fol. 1680] says, "Look, Dave, you go home, take a cold shower, I have some work to do, I am going to the shop; good-bye," and I left him at that time, and I made up my mind at that point that I wouldn't have anything to do with him, and I was very agitated.

Q. Did you give him any money?

A. I did not give him any money.

Q. Did you give him any money at any time?

A. No, I didn't.

Q. Did you tell your wife Ethel about this little walk that you had with him?

A. Yes. When I came home that night I told my wife about it. She was terribly upset. She says "Let's call Ruthie, let's talk to her."

So I said to her "Well, I don't know; you know, Ruthie just came home from the hospital. She has those burns, they are festering. She has a child and I do not even know if Davey is home. Maybe Ruth doesn't even know about

this trouble. What are you bothering her for anyway? What are you bothering her for? Anyway, he has always had it in for me." And she said "Yes, he is my kid brother, and the least I can do is help in time of need."

And I said, "Well, Ethel, I don't think we should bother." [fol. 1681] Well, my wife prevailed upon me and I said "Well, I will see if we can do something to help." And she wanted to make arrangements the next morning to go down to see David, to get a sitter for the children who were going to school. I says, "Look, Ethel, I am near Dave's house; perhaps I will drop in on them and take a look at him and see if he doesn't do anything rash, and that's all, and I won't even talk to him about it."

Well, I didn't have a chance to go over the next day—it must have been a day or two after, I dropped in on the Greenglasses and they just got up that morning and I remember sitting down at the Kitchen table and Ruthie said, "Hello" to me and I looked at the baby—I went into the bedroom and looked at the baby, and I noticed everybody was cool to me and I didn't want to bring the subject up in Ruthie's presence—I did not even know if she was aware of Davey's trouble, I did not want to aggravate her. I saw that Davey was calmer at this point and wasn't going to do anything rash so I picked myself up after a few minutes and I left the apartment.

The Court: Hold it——

Q. Is that the entire incident?

A. That is the last time that I saw Dave Greenglass.

[fol. 1682] Q. Until you met him in the Federal House of Detention?

A. That is right.

The Court: And you can't think of any reason whatsoever, can you, why Dave Greenglass would, of all the people he knew, his brother, all the other members of his family, single you out, as he did apparently and as you say he did, and say that you would be sorry unless you gave him the money?

The Witness: Well, he knew that I owed—he had an idea that I owed him money from the business, and I guess that is what he figured he wanted to get the money from me.

Q. Do you know whether Dave ever went to any of his other relatives to ask them for money?

A. No, I do not know that.

The Court: And you do not know of any other relative of Dave's, outside of you and his sister, who have been indicted, in connection with this case?

The Witness: No, I do not know of any other relatives.

The Court: We will recess now until 2.20.

(Recess to 2.20 P. M.)

[fol. 1683] AFTERNOON SESSION

JULIUS ROSENBERG, resumed.

Direct-examination (Continued).

By Mr. E. H. Bloch:

Q. Now Mr. Rosenberg, there has been testimony here from Dave Greenglass to the effect that on one of the walks you had with him and I believe it was the walk in the early part of June 1950, you told him to memorize certain signals or identification matter with respect to going to Mexico and appearing in front of a statue with a book, and going to some European country and also appearing before a statue with certain books in his hand.

Do you remember that testimony?

A. Yes, I recall it.

Q. Did any such conversation take place in the early part of June 1950 between you and Dave Greenglass?

A. No, it did not.

Q. Or at any other time?

A. No, we didin't have any such conversation.

Q. Now, did you ever authorize Dave Greenglass or have any discussion with Dave Greenglass whereby your name Julius or any other identification which might resemble your name could be transmitted or conveyed to anybody?

A. No, I did not.

[fol. 1684] Q. When was the first time that you heard that out in Albuquerque, New Mexico, on June 3, 1945 Gold came in and said "Julius sent me," or something like that?

A. The first time I heard that was when Harry Gold testified on this stand here.

Q. Now, I want to come down to certain testimony of both Dave and Ruth Greenglass. I think both of them testified in substance that you said to them that you had received a citation from the Russian government for services rendered. Did you ever make any such statement to them?

A. No, I did not make any such statement.

Q. Or to anybody?

A. No, I didn't make any such statement to anybody.

Q. Did you ever get a citation or a certificate or any document or any oral congratulations from the Russian government or any agent of the Russian government or any citizen of the Russian government for services that you had rendered on behalf of the Russian government?

A. I got nothing of the sort.

Q. Did you ever render any services for the Russian government?

A. I did not.

Q. Now then, there was testimony here that you said to Dave and Ruth Greenglass at one of the meetings you had with them, and I think it was sometime between 1946 [fol. 1685] and 1949 that you had received a watch from the Russian government. Do you remember that testimony?

A. I remember that testimony.

Q. Did you ever make any such statement?

A. I did not.

Q. Did you ever receive a watch from the Russian government or anybody authorized by the Russian government or any agent or representative of the Russian government, or any Russian?

A. I didn't receive any watch from any Russian or anybody.

Q. And there was also testimony that your wife Ethel—now, before we come to Ethel's watch: Did you have watches in your home?

A. Yes, I did.

Q. Do you know now that the FBI representatives at the time they searched your home took some of those watches?

A. Yes, they took them all.

Q. Can you identify every watch that was taken from your home by the FBI?

A. Yes, I can.

Q. And explain to the Court and jury just where each watch came from?

A. Yes, I can.

Q. Now——

Mr. E. H. Bloch: Now, I don't know whether this is the proper time to ask the Government to produce those watches.

The Court: Did you ask Mr. Saypol before?

[fol. 1686] Mr. E. H. Bloch: I did not, your Honor. This is the first time.

Are they available? If not, I can wait and come back to it.

Mr. Saypol: We will get them very quickly, whatever there is. 3 o'clock?

The Court: Well, you go ahead with your examination.

Mr. E. H. Bloch: All right.

The Court: Do you need the watches?

Mr. E. H. Bloch: That is what I was going to ask the Court.

The Court: You have a denial.

Mr. E. H. Bloch: All right, if you think that is sufficient. I also was wondering whether the Government at sometime before the defense rests would produce in court what material was removed by the Government agents from the Rosenberg home at the time they searched it. I don't know just what they took.

All right.

[fol. 1687] Q. Now, there has been testimony here——

The Court: Of course you shouldn't make the request that way. You could have talked to Mr. Saypol about that before and have an understanding about what should be produced and what shouldn't be produced.

Mr. E. H. Bloch: Well, I agree with your Honor there, but I had a lot of subjects here that I am covering seriatim and it slipped my mind.

Q. Now, Mr. Rosenberg, there has been testimony——

Mr. Saypol: Wait a minute, Mr. Bloch. The reason I made no point of it is because of my view as to its lack of importance. However, with respect to the watches, does counsel desire those now? Are there watches or a watch?

Mr. Norton: No, there are watches.

The Court: He said he doesn't want them.

Mr. Saypol: Forget about them.

Mr. E. H. Bloch: I say, at any time before the defendants rest.

The Court: We are talking about the watches now. You made another request for papers.

Mr. Saypol: Supposing the matter be left in abeyance until the recess, and then counsel can address himself to me.

Mr. E. H. Bloch: All right.

[fol. 1688] Q. Now, there has been testimony here from Dave Greenglass, and I believe also from Ruth Greenglass to the effect that you said to them that your wife Ethel also got a watch from the Soviet Union for services rendered, or substantively something like that; did you ever make such a statement?

A. I didn't make such a statement.

Q. Did Ethel make such a statement?

A. No, she did not.

Q. Did your wife Ethel have a watch?

A. Yes, she did.

Q. How did she come to have the watch?

A. I bought it for her.

Q. When did you buy it?

A. I bought it for her sometime before her birthday, in 1945.

Q. Where were you working at the time?

A. At Emerson Radio.

Q. How much did you pay for that watch?

A. I believe it was about $30.

Q. Did she have that watch from that time to the time of your arrest?

A. Yes, she did.

Q. Do you know whether your wife Ethel had any other watch outside of the watch that you bought for her?

A. I don't remember.

Q. Your wife Ethel would know better than you?

[fol. 1689] A. Yes.

Q. All right. Now then, Dave and Ruth Greenglass testified that you said to them that you received a console table from the Russian Government; do you remember that?

A. Yes, I heard that testimony.

Q. Did you ever make such a statement?

A. I did not.

Q. Did you ever receive a console table from the Russian government?

A. I did not.

Q. I think you have already testified that you purchased a console table from R. H. Macy?

A. That is correct.

Q. Now, can you be as specific as you possibly can about the date of that purchase?

A. Well, I can't remember exactly the date, but it was somewhere between 1944 and 1945 that I personally purchased the console table.

Q. How much did you say you paid for it?

A. Somewhere in the neighborhood of $21.

Q. Did you pay cash for it; was it a C. O. D. transaction?

A. I paid cash for it and I ordered it sent to my house. As a matter of fact, if I do recall, I believe I bought something else at that time.

Q. Now, did you get a bill for it?

A. Yes, I did.

Q. In whose name was the bill made out?

A. In my name.

[fol. 1690] Q. Julius Rosenberg?

A. That is correct.

Q. Was it subsequently delivered by R. H. Macy Company to your home at 10 Monroe Street?

A. It was.

Q. Do you know how long after you purchased that console table that it was delivered?

A. I can't remember; maybe a week or two weeks afterwards.

Q. Now, was the table that you purchased at Macy's the same console table that was in your home at the time the FBI finally came around to arrest you?

A. Yes, it was.

Q. Prior to your arrest in August—

Mr. A. Bloch: July.

Q. I mean in July, were you interrogated by the FBI?

A. Yes, once.

Q. When?

A. The morning after the FBI took David Greenglass in custody, they came to my house. There were three men.

Q. Do you recognize any of those men in court?

A. Yes, there was Mr. Norton (indicating).

Q. He is the gentleman sitting at the end of the table there?

A. Yes.

Mr. E. H. Bloch: Identifying Mr. Norton.

A. (Continuing) And a Mr. Harrington, and a third gentleman. I don't remember his name.

[fol. 1691] Q. I want you to tell the Court and jury, without my interspersing a lot of questions, just what happened on that day, when the FBI men came down to your home?

A. Well, they came down rather early, before we had finished dressing the children and getting them ready for school; I didn't have my shirt on, I remember, I didn't finish my shave yet, and there was a knock on the door. I opened the door. They said, "We are from the FBI. We would like to talk to you." I said, "Come in." I went into the bathroom with my wife and asked her, "Do you think I ought to talk to these gentlemen?" She said, "You know, if Davey is in some sort of trouble, if you can help my brother, talk to them; maybe you can be of some assistance to them."

I said, "I will talk to you gentlemen." And I finished dressing the children; my wife made some breakfast; I took my shave; and they looked around the apartment and said, "We can't talk here. Would you like to come down to our office and we will drop in and have a cup of coffee?" And I went with the gentlemen of the FBI, about 9 o'clock, I believe—we left the house a little before that—and we got into a car; we drove down to Foley Square here and they took me up to one of the 20th floors in this building.

[fol. 1692] Q. Now tell us what was said by the FBI agents to you and what you said to them, and how long you stayed there.

A. Well, there was a Mr. Norton in the room sitting at a desk with a pad in front of him, and Mr. Harrington sat on the other side of the table. I sat down on the front side of the table and another member of the FBI came in and sat behind, and they started asking questions about what I knew about David Greenglass. First they tried to get my background, what relations I had with him. I gave them my school background, work background and I told them whatever I knew about David Greenglass's education and his work background.

Q. Were you asked about your Government employment at that time?

A. No, they skipped over it.

Q. Did you tell them that you had formerly been employed by the Government of the United States?

A. Yes, I told them, and at that point they said to me—they questioned me and tried to focus my attention to, as I notice now, certain dates in the overt acts listed in this indictment. They asked me questions concerning when David Greenglass came in on furlough. I didn't remember. Then they said, was it in the winter or the summer? And they tried to keep bringing me around to the point where they could try to get me to state that I could remember specifically when. I couldn't recall all the events of his [fol. 1693] furlough. I helped them as much as I could in what I could remember. At one point in the discussion, I would say it was about two hours after I was there, they said to me, "Do you know that your brother-in-law said you told him to supply information for Russia?"

So I says, "That couldn't be so." So I said, "Where is David Greenglass?" I didn't know where he was because I knew he was taken in custody. They wouldn't tell me. I said, "Will you bring him here and let him tell me that to my face?" And they said, "What if we bring him here, what will you do?"

"I will call him a liar to his face because that is not so."

And I said, "Look, gentlemen, at first you asked me to come down and get some information concerning David

Greenglass. Now you are trying to implicate me in something. I would like to see a lawyer."

Well, at this point Mr. Norton said "Oh, we are not accusing you of anything. We are just trying to help you."

I said, "I would like to get in touch with the lawyer for the Federation of Architects and Engineers."

Q. Now when you said "the lawyer for the Federation of Architects and Engineers," were you referring to the [fol. 1694] lawyer who was the lawyer for that union when you were a member of that union?

A. That's correct.

Q. And are you referring specifically to any lawyer or are you referring to any specific lawyer?

A. Well, I had in mind a Mr.——

Mr. Saypol: May we have direct conversations and not conclusions?

The Witness: Well, this is conversation.

The Court: All right.

Q. All right, just tell us.

A. I finally remembered the name, Victor Rabinowitz, and I asked the FBI to please call him. Well, at this point Mr. Norton said, "Have a smoke, have a piece of gum. Would you like something to eat?" And the language he used in his actions were what the fellows at West Street would call conning——

Mr. Saypol: I object to that, if the Court please.

Mr. E. H. Bloch: I agree that it be stricken out.

The Court: Do you want to let it stand?

Mr. E. H. Bloch: No, I do not want to let it stand.

The Court: All right.

Mr. E. H. Bloch: I do not think it is important.

[fol. 1695] A. (Continued) And we discussed around the point.

Mr. Saypol: I ask that that be stricken.

Mr. E. H. Bloch: I did not hear that.

(Record read.)

Q. No; look, try to confine yourself to what actually was said.

A. I am sorry. Then Mr. Norton kept on going back to questions concerning ——

Mr. Saypol: I ask that the witness tell us what was said.

The Court: Frankly, I don't know what he is leading up to, but supposing we get the conversation, Mr. Bloch.

A. (Continuing) Mr. Norton asked me again, "Did you ask David Greenglass to turn over information for the Russians?" And I said, "No," I denied it. And then we discussed again what periods of time David Greenglass came in. I didn't recall too well and I kept on asking Mr. Norton, "I want to get in touch with my lawyer."

Finally, some time after lunch, it was probably between 12 and 1, my wife reached me at the FBI office and I told her that the FBI is making some foolish accusations, to please ——

Mr. Saypol: May that ——

Q. Never mind what you told your wife ——

Mr. Saypol: No, no, I do not mind what he told his [fol. 1696] wife but I mind his characterization about what the charges were.

The Court: Oh, now, wait a minute, Mr. Saypol; that objection doesn't mean anything. You are either going to object to what he told his wife if that is what he told his wife he has a right to repeat it here.

Mr. Saypol: I do not object to what he told his wife.

The Court: Then he can go right ahead.

Mr. Saypol: His characterization here.

The Court: That is what he told his wife. He may have called Mr. Norton all sorts of names, too.

Mr. Saypol: Well, I don't object to that and advisedly so, I assure your Honor, but I do object to his characterization here, what his characterization is now. If he said that to his wife ——

The Court: That is what he is saying.

Mr. Saypol: That can stand.

The Witness: That is what I said, your Honor.

By Mr. E. H. Bloch:

Q. Did you tell that to your wife over the telephone?

A. I did.

Q. And was Mr. Norton at your side when you talked with her?

A. He was.

Q. Now do you notice another gentleman who just came [fol. 1697] in at the counsel table for the prosecution?

A. Yes.

Q. Do you recognize that man?

A. Mr. Harrington, that is correct.

Q. Is that Mr. Harrington?

A. That is right.

Q. And was he one of the gentlemen who were down there the first time?

A. That is right.

Q. Did you finally leave the FBI offices in the Federal Building?

A. Well, before I did, somewhere between two and three o'clock, Mr. Norton called up Mr. Rabinowitz's office and he told me that Mr. Rabinowitz was not in. I said I would like to talk to somebody there and Mr. Rabinowitz's partner got on the phone, another lawyer, and I told him I was down at the FBI, and he said, "Are you under arrest?"

I said, "I don't know."

He says, "Ask the FBI if you are under arrest."

And I asked Mr. Norton, "Am I under arrest?"

He says, "No."

Then he said, "Pick yourself up and come down to our office," and I said, "Good bye, gentlemen", and I left the FBI office.

[fol. 1698] Q. And did you go down to their office there?

A. A little after three o'clock, I believe, when I left the FBI building here, I remember that as I walked out of the building I saw a New York Post with the picture of David Greenglass, and I picked it up, because that is the first I realized he had been officially arrested, and I went down to Mr. Rabinowitz's office.

By The Court:

Q. You mean you didn't believe what Mr. Norton and this other gentleman, Mr. Harrington, were telling you?
A. They didn't tell me he was arrested.
Q. I mean, about what Greenglass had said.
A. I didn't believe it.

By Mr. E. H. Bloch:

Q. At any rate, did you then attempt to hire Mr. Rabinowitz to take care of your interest?
A. Yes, I did, but he wasn't in his office. I talked to his partner.
Q. And were you finally referred by his partner to another lawyer and then finally referred to me?
A. Yes, that is exactly what happened.
Q. And did I become your attorney that night?
A. That is right.
Q. And have I been your attorney ever since?
A. That is correct.
[fol. 1699] Q. Now, did you at any time from the time of your interrogation on the day after Dave Greenglass was taken into custody until the time that you were arrested about a month later, ever attempt to remove any articles from your apartment or do anything to conceal any material or information from the Government authorities?
A. I did not.

Mr. Saypol: I object to that. That is calling for a conclusion. I don't know what he has in mind.
The Court: Overruled.
Mr. Saypol: If he has specific acts in mind, I wouldn't object.
The Court: Overruled.

Q. And did you continue after your interrogation by the FBI to live at 10 Monroe Street?
A. I did, sir.
Q. And did you continue to go to your business each and every day?
A. I did.

By The Court:

Q. Did you know whether you were under surveillance by the FBI at that time?
A. No, I didn't know.
Q. Did you think you were?
A. It didn't matter.
Q. Did you think you were?
A. I didn't know.
Q. I am asking you whether you thought you were.
A. I don't know, your Honor.

[fol. 1700] By Mr. E. H. Bloch:

Q. Well, now, look, I think what the Court has in mind is something that should be obvious: Did it occur to you, did the thought ever enter your mind after you were interrogated by the FBI and after they had said your brother-in-law had accused you of espionage, that maybe they let you go but they were going to watch you very closely? Did that ever occur to you?
A. It occurred to me that they would have arrested me if they suspected me.

By The Court:

Q. The answer is you didn't think you were under surveillance?
A. There was a possibility I could have been under surveillance.
Q. Did you think there was that possibility?
A. Yes, it entered my mind.

By Mr. E. H. Bloch:

Q. You went about your business?
A. That is correct.
Q. Did you come home every night?
A. I did.
Q. And did you live the same kind of routine life that you led prior to the time of your investigation?
A. Yes, I did.
Q. Now Mr. Rosenberg, tell me how many cameras you have ever owned in your life.

A. I have only—I have owned myself one camera.

[fol. 1701] Q. When did you buy that camera?

A. I didn't buy it.

Q. When did you get that camera?

A. The Kodak people were giving out free cameras to people who were born a certain year that coincided with their anniversary and I got one of those cameras.

Q. When? In what year?

A. About 18 years ago.

Q. Have you had that camera ever since?

A. That is correct.

Q. And did you from time to time take snapshots of your family and friends with that camera?

A. Well, I took some pictures with that camera.

Q. Did you ever microfilm any material?

A. No, I did not.

Q. Did you ever borrow any cameras?

A. Yes, I did.

Q. From whom and when?

A. I borrowed from my brother-in-law Bernard Greenglass, his sister-in-law Jean, and a cousin of my wife's, Julius Lewis, cameras from time to time when I went on a vacation or when I took family pictures.

Q. When you went on a vacation? Do *you* mean when you went on a vacation with Ethel?

A. That is correct, sir.

Q. Outside of those cameras, did you ever have any other camera?

[fol. 1702] A. No, I did not, sir.

Q. Mr. Rosenberg, just to come back for a second to that testimony that you spent $50. or $75. a night for entertainment: Have you ever been in a night club in your life?

A. Once.

Q. What night club?

A. Well, the Federation of Architects had a dinner party at Cafe Society.

Q. Uptown or downtown?

A. I don't remember.

Q. Was that the only night club you were ever at?

A. That is the only night club I ever attended.

Q. Now, were you in the habit of going to high class restaurants?

A. I don't know what you mean by high class, Mr. Bloch.

Q. All right. Did you ever go to restaurants where the prices were expensive?

A. Yes, I did.

Q. How many?

A. Well, once when I was taking my wife out, to a place near Emerson Radio called Pappas, and on another occasion I have eaten at a place called Nicholaus on Second Avenue.

Q. Did you ever eat at Manny Wolf's?

A. Yes, I remember eating there once.

Q. With whom?

A. When I was working as an inspector Jefferson Travers Radio they had a dinner party and they invited the inspectors down to Manny Wolf's for dinner and for a show.

[fol. 1703] Mr. Saypol: Fix the time, please.

Q. Mr. Saypol would like you, and I think we all would like you to fix the time when you went down to Manny Wolf's restaurant.

A. It was either in 1941 or 1942.

Q. Now I would like to come back for a moment to the console table. At the time that you moved into Knickerbocker Village and you had your apartment furnished, as you say, from some friends of yours, were there any console tables there?

A. There were tables there.

Q. Before I ask you the next question with relation to the console table, will you tell the Court and jury the name of your friends who permitted you to use their furniture when they went out West and you stayed on here?

A. Harry and Sylvia Steingart.

Q. Was Mrs. Steingart an engineer?

A. Yes, she was.

Q. Do you know whether or not they left you any console tables?

A. Well, they left us some tables.

Q. Well, do you know what a console table is, or I think it is pronounced console, I don't know?

A. Well, they left us two tables. If I tell you the tables they left us perhaps that will answer the question.

Q. Will you describe them?

A. They left us a maple leaf table and gate-leg table, [fol. 1704] and after they had settled in California they asked us to send them their maple leaf pieces because that was the best pieces they had lent us, and since the gate-leg table wasn't worth shipping, they left the gate-leg with us.

Q. And did you have that gate-leg table at the time you purchased this console table from Macy's?

A. Yes, I did.

Q. What happened to that gate-leg table?

A. Well, it was broken. The child was running around the house and we needed some more room; so my wife sold it.

Q. And how much did she receive for it?

A. She got $5. from a furniture dealer.

Q. Let me ask you: did that console table have any special apparatus for photographing material?

A. No, it did not.

Q. Now Mr. Rosenberg, do you know your co-defendant Morton Sobell?

A. Yes, I do.

Q. How long have you known him?

A. Well, we met at City college.

Q. You went to school with him?

A. Yes, that is correct.

Q. At least college?

A. That is right.

Q. And did he obtain a degree in engineering?

[fol. 1705] A. Yes, he did.

Q. And you obtained a degree in engineering?

A. Yes.

Q. Now, did you meet him after you graduated?

A. When we lived in Washington, D. C., in 1940 for a couple of months we bumped into each other at a swimming pool. At the same time I met him I saw Max Elitcher

and Elitcher's brother at that pool. It was an accidental meeting.

Q. And did you spend the rest of the day with each other?

A. Just a couple of seconds.

Q. When was the next time that you saw Morton Sobell?

A. Well, I don't remember exactly what year it was, but I met him in New York. He came to my house. I believe it was 1946. I am not certain of the time.

[fol. 1706] Q. Was he already married at that time?

A. I don't know; I don't remember.

Q. Did Morton Sobell and his wife Helen Sobell ever visit you at your home?

A. Yes, they did.

Q. On how many occasions?

A. There are two occasions that I remember.

Q. Tell us about those two occasions.

A. One occasion was around Christmas and Chanukah time.

Q. What year?

A. It was either '47 or '48; and they both came over, and we just visited socially.

Q. Were there any other people present at the time, that you can remember?

A. Yes, there were other people present.

Q. Do you remember the names of any people who were present, outside the Sobells, now?

A. I could recall only one name at this time.

Q. What is her name?

A. A Miss Vivian Glassman.

Q. Were there other people besides the Sobells and Vivian Glassman and you and your wife, your wife and you?

A. I don't know, but there might have been someone else. I don't remember at this time.

Q. Now did the Sobells visit you on another occasion, if you recall?

A. I recall one other occasion.

Q. Well, tell us about that, and if you can, fix the time, please.

[fol. 1707] A. Again, it was either '47 or '48. The two

occasions were approximately a year apart, except that the second occasion was in the spring time, while this was nearer Christmas time. Mr. and Mrs. Sobell came over, and I remember my wife going down with Mrs. Sobell to buy Chinese food, and they went down together and brought the food up, and we had a Chinese food dinner.

Q. Did you, alone or in the company with your wife, ever visit the Sobells?

A. No, I did not.

Q. In Schenectady, New York?

A. No, I have never been there.

Q. Or when the Sobells finally moved back from Schenectady to New York City?

A. No, I have never been to their house.

Q. Did you ever visit the Sobells in Flushing?

A. No, I did not.

Q. Is that where they live?

A. I know they live in Queens somewhere.

Q. Did Sobell ever deliver to you any information relating to the national defense of the United States?

A. He did not.

Q. Did Sobell ever disclose to you anything concerning information or material that he had obtained by reason of his position with the General Electric Company in Schenectady, New York?

A. He did not.

[fol. 1708] Q. Did Sobell ever communicate to you any information with respect to any information that he obtained by reason of his employment in the Reeves Instrument Company, here in New York?

A. He did not.

By The Court:

Q. How often had you been seeing him during that period of time?

A. Which years are you talking about, sir?

Q. '44, '45, '46, '47.

A. I would say—I am not talking about '44 and '45. I don't believe I have seen him in '44 and '45, but in '46 and '47, once or twice a year.

Q. You heard Mr. Elitcher testify that you came to see him in June of 1944 in Washington, D. C. Did you see him at or about that time?

A. I saw Mr. Elitcher in Washington, D.C., but I can't specify if it was in June 1934, if it was in '33 or '34.

Mr. E. H. Bloch: You don't mean '34; you mean '44.

The Witness: '43 or '44.

Q. When had you seen him previous to that, in 1940, was it?

A. That's right, sir.

Q. And when you went to see him on this occasion in '43 or '44, you heard him say that you had mentioned Mr. Sobell's name during the course of that conversation. Do you remember that?

[fol. 1709] A. I heard what he testified to.

Q. Now, did you go to see him pursuant to Mr. Sobell's instructions or advice, or anything like that?

A. I did not.

Mr. E. H. Bloch: I was coming to that conversation right now, your Honor.

By Mr. E. H. Bloch:

Q. Now, did there come a time in the course of your employment with the United States Government that you were assigned to do certain work in Washington, at the Bureau of Standards?

A. That's right.

Q. About how long did you remain in Washington to complete your assignment?

A. Well, I don't remember the exact number of days, but I know it was about three to five days.

Q. Did you call Mr. Elitcher on the telephone while you were down on that assignment in Washington?

Mr. Saypol: May we have the dates fixed when he had this assignment?

The Court: All right.

Q. Can you remember specifically when you were assigned by the United States Government to come down to Washington to do some work at the Bureau of Standards?

[fol. 1710] A. I can't remember specifically, but my Gov-

ernment travel records will show when I was assigned to Washington.

Q. Well, independently of any Government records, we want you to give us your best recollection, either the exact day or the month or at least the year.

A. I would venture a guess. It was 1944, somewhere between the summer and autumn, about that time.

Q. Is that your best recollection?

A. I am not certain of it, though.

Q. All right. Now, at any rate, did you call Mr. Elitcher on that occasion when you were down in Washington?

A. Yes: I was there alone and I was lonesome and I looked up in the telephone book for Mr. Elitcher's number, and I called him one evening.

Q. Did he invite you over to the house?

A. Yes, he did.

Q. Did you come over to the house?

A. Yes, I did.

Q. Was his wife present?

A. His wife was present.

By The Court:

Q. Had you been in Washington between 1940 and that particular date?

A. No, I hadn't.

Q. That was the first visit since 1940?

A. Since 1940.

[fol. 1711] By Mr. E. H. Bloch:

Q. Now, did you have anything to eat at the Elitcher house, if you remember?

A. Well, all I could recollect is that I either had some coffee or some pie, or some coffee and some dessert.

Q. Now, did you sit around with Mr. Elitcher and his wife and talk after you had your coffee and dessert?

A. Yes, we did.

Q. I want you to tell the Court and jury, as best you can—nobody expects you to give the exact words—the substance of what you talked about that night?

A. Well, I told him I was in Washington on my job;

I told him I was working with the Signal Corps; I told him the rating I held. He told me he was working for the Government; he told me his rating that he held; and we discussed—I told him about my child—and we discussed the climate in Washington, it is hot in the summer time, cold in the winter time; and we discussed the war.

Q. Did you discuss the particular kind of work that you did at your job?

A. No, I just told him I was on an inspection job at the Bureau of Standards.

Q. Did you discuss the particular work that he was doing at his job?

A. No, he just told me that he was doing engineering work.

[fol. 1712] Q. Did you during the course of that evening ever say to Mr. Elitcher in specific words or by implication, that you wanted him to engage in espionage work, or, let me put it this way, or that you wanted him to get certain information from the Government by reason of this access to certain secret information?

A. I never said anything of the sort.

Q. Did you discuss politics?

A. Yes, I did.

Q. Did you discuss the Soviet Union?

A. Yes, I did.

Q. Did you discuss the war?

A. Yes, I did.

Q. Tell us what you said to Elitcher and what he said to you?

A. Well, we discussed the progress of the war, the fact that the German Army was taking a beating at that time, and that a terrific amount of power is being built up by the Allies to put the finishing touches to the war; and we discussed the fact that the Russians had been carrying a very heavy burden in the war.

Q. Now did you at that time find out whether Mr. Elitcher was a member of any labor union?

A. I believe he may have mentioned in the conversation that he was a member of Federal Workers. I am not certain.

Q. Did his wife mention to you whether she was a member of any union?

A. Yes, I believe they both said they were members of the union.

Q. Have you recounted now substantially everything that [fol. 1713] was said on that first visit down at Elitcher's apartment in Washington?

A. Substantially, what I could remember.

Q. Did there come a time when you visited Elitcher again in Washington?

A. Yes, there did.

Q. Do you remember when that was?

A. Well, I can't remember it exactly. It was some time in 1945, after I was dismissed by the Federal Government.

Mr. E. H. Bloch: May this be offered for identification, please?

(Marked Defendants' Exhibit E for Identification.)

Mr. E. H. Bloch: And may this be offered for identification, the whole folder?

(Marked Defendants' Exhibit F for identification.)

Q. Now, did you notice that I tore out this piece of paper, Defendants' Exhibit E for identification, from a file which has been marked Defendants' Exhibit F for identification (showing)?

A. Yes, I did.

Q. Take a look at Defendants' Exhibit F for identification and tell us what that represents.

A. This file states "Rosenberg, Julius, fact, ind. member cases."

Q. Does that file contain the history of your controversy with the Federal Government at the time or in connection with your separation from the Federal Government?

A. Yes, it does.

[fol. 1714] The Court: Which file? Whose file is it?

Mr. E. H. Bloch: I got that from his lawyer's office.

The Court: From whose lawyers' office?

Mr. E. H. Bloch: From his lawyer's office, Victor Rabinowitz's office.

The Court: I think you ought to identify the file. The impression I got was it came from the Government.

Mr. Saypol: I can't figure out what the procedure is. I never heard of anything like it.

By Mr. E. H. Bloch:

Q. Now, I am going to ask you what that file is.

Mr. Saypol: I don't care what it is. I expect this witness to testify orally, and then anything to support it by documents.

The Court: I don't know what is coming yet.

Mr. Saypol: I don't myself.

A. This was the record of my case with the Government at the time of my dismissal.

Q. Now that file that you have is your private file, or the private file of the lawyer who represented you; is that correct?

A. That is correct.

Q. That file doesn't come from the files of the United States Government, does it?

A. No, there are papers from the United States Government in it.

[fol. 1714-A] Q. All right. Now, I am going to show you Defendants' Exhibit E for identification and ask you whether, after looking at that paper, that refreshes your recollection as to the second time that you visited Elitcher at his home in Washington?

A. Yes, it does.

Q. And when do you say you visited Elitcher for the second time in Washington?

A. In April 1945.

[fol. 1715] Q. And I want you to tell the Court and Jury the circumstances under which you came to visit Elitcher at his home in Washington in April 1945?

A. Well, I wrote this letter to——

Q. No; just don't characterize what is in the contents of a paper that hasn't been marked in evidence yet. Just tell us how you came down there.

A. I wrote to Mr. Rabinowitz in April, telling him——

The Court: No, don't tell us that.

A. No, don't say that.

The Court: Tell us when you saw Elitcher again.

Q. Tell us when you saw Elitcher and the circumstances under which you came to Washington and saw him?

A. Well, that is the circumstances that made me go to Washington. I asked Mr. Rabinowitz——

Mr. Saypol: Just a moment. I don't care what the circumstances were as long as he is refreshed and says it is April 1945.

The Court: That is right. You saw Elitcher in April 1945. You remember now that that is the time.

Mr. E. H. Bloch: That is right.

The Court: We don't care what brought you there. Just tell us what happened.

[fol. 1716] Mr. E. H. Bloch: Let me ask a few questions, your Honor, I think I can clear it up.

Q. When did you reach Washington in April 1945?

A. It was on a weekend, a Saturday morning.

Q. And had you taken a night train from New York?

A. Yes, I did.

Q. What was the first thing you did when you got into Washington?

A. I got into Washington too early to conduct any business. I went out of the station—I believe it was the Pennsylvania Railroad Station—ate, bought a newspaper, read and sat around until 9 o'clock.

Q. What did you do at 9 o'clock?

A. At 9 o'clock I called up the office of my Congressman, Samuel Dickstein and asked——

Mr. Saypol: Never mind, I object to that.

Q. All right, you called up your Congressman's office——

Mr. Saypol: I ask that that be stricken out. I don't care about Congressmen, if the Court please, in a trial like this.

The Court: Oh, let us have it, it is in the record.

Q. As a result of calling up your Congressman's office, did you see your Congressman?

A. No, he wasn't in his office at that time. They told

[fol. 1717] me to call back later, perhaps they could locate him.

Q. After that telephone call did you go over to Elitcher's house?

A. Yes, I did.

Q. And did you see Mr. Elitcher?

A. I did.

Q. And did you see Mrs. Elitcher?

A. I did.

Q. And did you have a conversation with Mr. Elitcher?

A. I did.

Q. Now tell us what that conversation was about?

A. I told the Elitchers that I had come to Washington to try to see my Congressman and some people of the Federal Workers who knew about cases of dismissed employees, and I was going to Washington to try to get—I don't remember the name of both people I came to see—a Mr. Stein and another person, to go with me to see my Congressman and tell me the procedure in appealing my case.

Q. And did Elitcher reply to that?

A. Yes. He told me he and his wife were going down to the union headquarters and if I want I can come along with them.

Q. And did you go along with them?

A. Yes, I did.

Q. And did you drive in their automobile to union headquarters?

A. I did.

Q. When you got to the union headquarters did you see Mr. Stein?

A. No, I spoke to a volunteer worker there and they told [fol. 1718] me there——

Mr. Saypol: I object to what they told him.

Q. Just don't tell us about the conversation.

A. I didn't see Mr. Stein.

Q. And as a result of going to the union headquarters with the Elitchers, did you go some place afterwards?

A. Yes, I did.

Q. Now before you went to that some place else, did you say "Good-by" to the Elitchers?

A. Yes, I did.

Q. Did you have any conversation with Elitcher or Mrs. Elitcher at that time with respect to any espionage or getting any secrets from the Government?

A. I did not.

Q. Did you leave the Elitchers at the union hall?

A. Yes, I did.

Q. Did the Elitchers direct you how to get to the place that you were going to?

A. They did.

Q. Did you take a trolley car?

A. I did.

Q. And where did you go to?

A. I do not remember the exact street but it was either F or G Street.

Q. And was that to see Mr. Stein and this other official?

A. That is correct.

Q. Did you see them?

A. No, I did not.

Q. What did you do after you didn't see them?

A. Well, I just went home.

[fol. 1719] Q. And did you arrive home later——

A. But before I went home I called my Congressman again and they said they couldn't locate him, to try in New York.

Q. Incidentally, prior to the time that you went down to call your Congressman in Washington had you tried to communicate with him in New York?

A. I did. I called his home, his office——

Mr. Saypol: Just a moment. I have been very hesitant about objecting. I am not here to defend the Congressman. The Congressman is not on trial. It is so utterly immaterial——

Mr. E. H. Bloch: I do not think anybody is accusing the Congressman.

Mr. Saypol: But I think it is so utterly immaterial that in the interests of conservation of time and in the interests of the merits of the trial we ought to get along.

The Court: Are you finished with this subject?

Mr. E. H. Bloch: Just one question.

Q. Did you attempt at any time to conceal your identity or the fact that you were in Washington, D. C. on that second visit to Elitcher?

A. I did not.

Mr. E. H. Bloch: I think I am almost through; I want to find out whether I overlooked anything.

(Mr. E. H. Bloch confers with Mr. A. Bloch, off the record.)

[fol. 1720] Q. Mr. Rosenberg, there has been testimony here from the Greenglasses that sometime in the latter part of May—I think it was Memorial Day—that they went and got certain passport photo pictures and they kept one set and they gave you five sets. Did you ever get any five sets of photos from them?

A. I did not.

Q. Did you know that they had taken any photos?

A. I did not.

Q. Did you ask them to take any photos?

A. I did not.

Q. Just one last question; Did you ever have any arrangement with Dave Greenglass or Ruth Greenglass or any Russian or with your wife or with anybody in this world to transmit information to the Soviet Union or any foreign power?

A. I did not have any such arrangement.

Q. Did you ever engage in any such traffic or transactions?

A. I did not.

Mr. E. H. Bloch: I think I am through, your Honor.

By The Court:

Q. Has Mr. Sobell ever been at your home?

A. Yes, he has.

Q. When? Do you remember the occasions?

A. He has been there in '48; he has been there in '49 and [fol. 1721] been there in '47.

Q. Do you remember how many times each year?

A. I would say a couple of times.

Q. What does that mean—about twice?

A. About twice.
Q. Each year?
A. That's right.

Mr. E. H. Bloch: I am sorry, your Honor, I forgot to cover two incidents in connection with the testimony of Elitcher.

By Mr. E. H. Bloch:

Q. Did you ever meet Elitcher at 42nd Street and Third Avenue at which Sobell was present, at which you took a walk with Sobell and Elitcher and thereafter ate with Elitcher at Manny Wolf's?
A. No, I did not meet Elitcher and Sobell there.
Q. Did you——
The Court: Did you ever meet them together?
The Witness: Only in Washington, D. C. at that swimming pool.
The Court: Never since?
The Witness: Never since.
Q. I believe Mr. Elitcher testified that this incident about 42nd Street and Third Avenue occurred in June in 1948. Did any such incident occur?
A. It did not.
[fol. 1722] Q. Did you ever——
The Court: Excuse me—did you ever discuss with Mr. Sobell Mr. Elitcher?
The Witness: No, I did not.
The Court: After the swimming pool incident?
The Witness: No, I did not.
The Court: Did his name ever come up when you saw Mr. Sobell in 1947 or 1948?
The Witness: No.
The Court: Never mentioned the name?
The Witness: No, we didn't mention the name.
Q. I would like to ask you this——
Mr. E. H. Bloch: This is another incident that I forgot to cover, your Honor.
Q. —I think it was Mr. Elitcher who testified that he once went in an automobile with Mr. Sobell down to some place near your house, Sobell got out, went out of the automobile to go to your house.

Did Mr. Sobell ever bring to you any microfilm can or microfilm or any material whatsoever?

A. He did not.

Mr. E. H. Bloch: I think that is all.

The Court: Would you like to have a recess at this point?

Mr. Saypol: However your Honor desires. Maybe it is [fol. 1723] advantageous and then we can go right on.

The Court: All right, we will take a recess.

(Short recess.)

The Court: Before Mr. Saypol begins his cross-examination I think I should tell the jury that we will not have a session tomorrow. Judge Knox, the Chief Judge of the court, has several weeks back declared that there would be no calendars on that particular day. It is a holy day and I am sure a lot of members of the jury will probably want to respect the day and I shall not have a session tomorrow. We will have our next session Monday morning.

Proceed.

Cross-examination.

By Mr. Saypol:

Q. Mr. Rosenberg, tell us a little bit about your associates when you were at City College. Who were they?

A. Fellow students I attended school with.

Q. Yes?

A. Morton Sobell attended City College. There was Benjamin Yelsey. I believe he changed his name from Yelsey.

Q. Spell Yelsey?

A. Y-e-l-s-e-y. Marcus Pogarsky; Joel Barr.

Q. That is the man whom you told us today you lived with your wife for about a year over in Williamsburg and you forgot to tell us about that yesterday, is that right?

[fol. 1724] A. That is correct. Max Elitcher attended City College at that time. That is about all I can remember at this time.

Q. Was there a man or a boy by the name of Perl or Mutterperl?

A. Your Honor, I read in the newspapers about——

The Court: You had better not say anything you think may hurt you.

The Witness: Yes, sir, that is what I want to say. I read in the newspapers about a man being arrested for perjury——

Q. Before you tell us that——

A. Wait a second. I would like to finish my statement.

The Court: Let him finish, Mr. Saypol.

The Witness: My name was mentioned and I feel that I refuse to answer any questions that might tend to incriminate me.

Mr. Saypol: You see, that is all I wanted to know, whether he knew him because if he said no I should not have to press it.

Now, in the posture of the case as it is, the witness raises a question of incrimination, apparently of the defendant's own making on his direct examination. That may occur and I should ask the Court not to make any positive direction except as I may request it. In other words, I shall [fol. 1725] try to be selective in my questions until such time as I deem it necessary.

The Court: Then I will consider you are not pressing the question.

Mr. Saypol: Yes.

The Court: Where he asserts privilege.

Mr. Saypol: Yes.

The Court: Therefore I will make no ruling.

By Mr. Saypol:

Q. So the state of the record is in respect to a man named Perl or Mutterperl you raise the question that an answer might tend to incriminate you, is that right?

Mr. E. H. Bloch: Wait a second. That has already been asked and answered and I don't think there should be too much of a statement or discussion about it.

The Court: All right.

Q. Were there any other persons that you forgot to tell us about or you haven't told us about that you were friendly with or associated with at City College?

A. Yes. There was a man by the name of Joel Barr.

Q. Where is Joel Barr today, do you know?

A. To the best of my knowledge he is in Europe today.

Q. Did you have anything to do with getting him into Europe?

A. No, I did not.

[fol. 1725-A] Q. Are there any others?

A. That is about all I can remember at this time.

Q. Was there any common activity or were there any activities which brought this group you have named together.

A. Yes.

Q. And what were those?

A. There was a student chapter of the American Institute of Electrical Engineers at City College and I was a member of it.

[fol. 1726] Q. Any other activities?

A. I don't understand what you mean, Mr. Saypol?

Q. Well——

The Court: He wants to know whether you belonged to anything else with them; did you have any club or anything like that?

The Witness: What kind of a club?

Q. You tell me.

A. I don't understand the question.

Q. Well, were there any other associations, clubs, fraternities, organizations, study groups, lunch clubs, dinner clubs, at the college, at which you and these others or some of them met together, talked together?

Mr. E. H. Bloch: If the Court please, I think that the question is very general, but that is not the reason I am objecting to it. I feel that we may be intruding now in that ground of political activity which we discussed with the Court.

Mr. Saypol: I don't think so at all. I think I observe a distinct reticence on the part of the witness to answer my question.

Mr. E. H. Bloch: I object to any statements on the part of Mr. Saypol.

The Court: Wait a minute, wait a minute. You are not objecting to the form of the question; is that right?

[fol. 1727] Mr. E. H. Bloch: That is right.

The Court: I think the witness can answer the question. If he can't answer the question, the witness seems to be very intelligent; he seems to know just what his rights are; he didn't have to have any probing from you before to assert any privilege. I think he knows what his rights are.

Mr. E. H. Bloch: Now, if the Court please, I would like to make a statement for the record in support of my objection, and it is going to be very brief. If this question seeks amongst other things to elicit from this witness any association by him with the Young Communist League or anything to do with communism, I object to it, at least to that portion of the question which seeks to elicit that.

The Court: On what ground?

Mr. E. H. Bloch: Upon the ground that no causal relationship has been proved or established.

The Court: You are not objecting then on any constitutional ground?

Mr. E. H. Bloch: Yes, of course.

The Court: Oh, you are objecting on the causal ground.

Mr. E. H. Bloch: I am objecting on the causal ground, [fol. 1728] and it is for the witness and not for me to assert his privilege.

The Court: On your ground, it is overruled.

Mr. E. H. Bloch: All right, I respectfully except.

The Court: Now, I am not ruling on the privilege.

Mr. E. H. Bloch: You see, I can't exercise any privilege for the witness.

The Court: I just want to be sure what you were doing.

Mr. E. H. Bloch: That is right; I am objecting on a strictly legal, logical, if you will——

The Court: That is right; overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: Maybe I can help the witness.

The Witness: Your Honor, can I say something?

The Court: Do you understand the question? First I want to make sure that you understand the question. Do you?

The Witness: No, I do not.

Q. Well, is there a Boy Scout troop up there?

A. Not to my knowledge.

Q. So you didn't belong to that; is that right?

A. I did not belong to that.

[fol. 1729] Q. Was there a Hillel Society up there at City College?

A. Yes, I believe there was.

Q. Were you all active in that?

A. No, I was not.

Q. How about the others?

A. What others?

Q. Those whom you have named.

A. I don't know what their activities were.

Q. Well, you don't know that they were active, for instance, in Hillel?

A. I do not know.

Q. Were there any civic clubs up there, that you were active in?

A. I don't believe there were any civic clubs at the college.

Q. Were there any fraternities that you and that group were members of?

A. Mr. Saypol, there was no group.

Q. Well, I am talking now about those that you told us about, that you knew up there.

A. Not to my knowledge.

Q. Now, tell us what groups you were active in.

A. I stated before, I was a member of the American Institute of Electrical Engineers.

Q. That we know, but what others? Were there others?

A. Yes, there were other groups on the campus.

Q. What were they?

A. Students council.

Q. Were you active in the students council with them?

A. I participated in student council activities.

Q. With Barr and with Elitcher and with Sobell?

[fol. 1730] A. Not with them; by myself.

Q. What other groups?

A. There was the American Students Union on the Campus.

Q. Were you active in that?

A. I was a member of the American Students Union.

Q. Any others?

A. That is all that was on the campus.

Q. Was there a Karl Marx Society?

A. To my knowledge, I don't know.

Q. Well, what did you have in mind, what group did you have in mind a moment ago when you raised the question of your constitutional right against self-incrimination?

Mr. E. H. Bloch: I object to the form of the question. I object to its substance, if your Honor please.

The Court: No, I think that it is proper. He can tell us what group he had in mind and then assert his privilege.

Mr. Saypol: Let me put it this way to protect the record, if your Honor will allow me.

The Court: All right.

Q. Is there a group that all of you were active in together, as to which you raise the question of your constitutional privilege, that you don't want to tell us about?

[fol. 1731] Mr. E. H. Bloch: I object to the form of that question. I think that is highly improper.

The Court: Well, no, I agree with you, but I do think that this question may be asked:

Do you know what your lawyer had in mind when he took an objection to it?

The Witness: That is in his mind, your Honor, not in my mind.

The Court: In other words, you don't know?

The Witness: No, I don't know.

The Court: You haven't any idea what he had in mind?

The Witness: No.

Mr. Saypol: You see, I don't want to couch it the way I did originally, that is, ask him what the group was to which he objected, because that might be suggestive of an indirect way of getting in what I had in mind.

The Witness: Can I state something, sir?

The Court: Yes.

Mr. Saypol. You will in a minute.

The Court: Let him state.

The Witness: I would like to state, on any answer I made on this question, I don't intend to waive any part of my

right of self-incrimination, and if Mr. Saypol is referring to the Young Communist League or the Communist Party, [fol. 1732] I will not answer any question on it.

The Court: You mean, you assert your constitutional privilege against self-incrimination.

The Witness: That's right.

By Mr. Saypol:

Q. How about the Steinmetz Club; is that in the same category?

A. I do not know, sir.

Q. Were you a member of that?

A. Again, sir, I refuse to answer the question on the grounds it might tend to incriminate me.

Q. Well, a moment ago you said you didn't know and—well, do you know, and for that reason you raise the question of privilege?

A. (No answer.)

Mr. Saypol: All right, we will move on.

Q. Now, how well did you know Elitcher up there?

A. Very casually.

Q. How frequently did you see him?

A. Very infrequently.

Q. Once a week?

A. No.

Q. Did you go out with him socially?

A. I did not.

Q. Did you have girls, girl friends together?

A. We did not.

Q. Did you go to dances together?

A. We did not.

[fol. 1733] Q. Did you discuss the affairs of the day and politics together?

A. I didn't have the occasion while we were at school.

Q. And you graduated in 1939, I think, didn't you?

A. That is correct.

Q. In February?

A. Right.

Q. Then the next time that you saw him was at a swimming pool for a minute in Washington, in 1940; is that right?

A. That is correct.

Q. How long did you see him, for just a minute?

A. That's right.

Q. Was he in the water or was he out?

A. Out side the water.

Q. What did you talk about in that minute, very much?

A. Just, "Hello. I am working in Washington." That is what he said to me.

Q. Then you didn't hear from him or see him again until when?

A. Until sometime in '44.

Q. Now, you were a little bit uncertain about the date in 1944, four years from the day you saw him at the swimming pool; can't you fix the date in a more positive way?

A. I cannot, sir.

Q. Well, let's see now. Do you recall when D-Day was in 1944?

A. I do not remember the day.

Q. Well, if I tell you that it was June 4th, 1944, would [fol. 1734] that refresh your recollection?

A. I take your word for it that it was June 4th.

Q. Well, it was June 6th, take my word for it, it was June 6th, and would that act as a refresher as to the date when you saw him?

A. No, it would not.

Q. Do you remember hearing him testify that when you saw him on that date in 1944 you had a toast to D-Day?

A. I heard him testify.

Q. D-Day was the date, really, of the second front, was it not?

A. I believe so.

Q. And you and he were quite elated about that, were you not?

A. I don't recall being elated about that, at that time.

Q. Well, did you have a drink that night, as he described?

A. I don't recall having a drink at his house, except for a cup of coffee.

Q. Do you recall having talked about the invasion as a distinct aid to Russia?

A. I don't recall having talked about that.

Q. Were you pleased about the fact of the invasion?

A. I just said I don't recall about talking about the invasion.

Q. I say, were you pleased? Were you happy about it?

A. When the second front was open?

Q. Right.

A. Yes, I was happy when the second front was open.

[fol. 1735] Q. You don't remember talking to him about it that night?

A. No, I don't remember.

Q. Now, at City College you saw him infrequently; then after City College, a year later, in 1940, you saw him for a minute in a bathing suit; is that right?

A. That is correct.

Q. And then four years later, when you were in Washington, you decided that you wanted to call him and pay him a visit?

A. That's right.

Q. Well, what was it that you wanted to see him about?

A. I was lonesome and I just wanted to see somebody to talk to.

Q. But you didn't know him very well, did you?

A. Well, he went to the same school I went to.

Q. And you didn't know him very well at the same school that you both attended?

A. That's right.

Q. And between 1939 and 1944, the only time you saw him was at the swimming pool for a minute?

A. That is correct.

Q. And you hadn't written to him?

A. No, I hadn't.

Q. He hadn't written to you?

A. He did not.

Q. Had you talked to anybody about him?

A. I did not.

[fol. 1736] Q. Had anybody talked to you about him?

A. No, they didn't.

Q. Did you know in the interval whether he was alive or dead?

A. I didn't know.

Q. And out of the clear sky you looked in the telephone book under "E" for the name Elitcher and you called him up?

A. I was looking for some——

Mr. E. H. Bloch: I object to the form of the question, "out of the clear sky."

The Court: This is cross-examination.

Mr. Saypol: Maybe it was raining. I beg your pardon.

Mr. E. H. Bloch: Maybe it was, I don't know.

A. (Continuing) Mr. Saypol, I was looking in the phone book for any names that I could recognize as former classmates or people I knew at one time.

Q. Where did you look in this phone book?

A. At a telephone book.

The Court: What names were you looking for?

The Witness: For some names I might recognize.

The Court: You mean, you started with "A" and started going——

The Witness: No, I didn't just start with "A"; I thought of a couple of people's names who might be in Washington; I remembered the incident at the swimming pool at that [fol. 1737] time, that Elitcher was in Washington, and perhaps he had a telephone.

The Court: What other names did you think of, do you remember?

Mr. E. H. Bloch: The Judge asked you a question.

The Witness: Sobell.

By Mr. Saypol:

Q. Was Sobell in Washington at the time?

A. I looked up his name; I couldn't find it in the book.

Q. How many days had you been in Washington when you decided that you were lonesome and you wanted to look up somebody?

A. I believe it was about the second or third day of my stay there.

Q. Well, had you met any people in the Bureau of Standards, with whom you were working?

A. No.

Q. While you were there?

A. I met some people there, but I didn't know them socially.

[fol. 1738] Q. Did you know Elitcher socially?

A. No, but he had been a former classmate.

Q. But you hadn't seen much of him, had you?

A. That is correct.

Q. Now what did you talk about when you got to his house, or, wait, let me withdraw that—telephone to—is that right? You found the number; right?

A. That is correct.

Q. What was the conversation? What did you say and what did he say?

A. I said something to the effect: "I am in town; can I come over to see you."

Q. Well, did you tell him what your name was?

A. Sure.

Q. Did he recognize your name right away?

A. I don't recall if he did or if he didn't, but he says "Come over."

Q. Did you tell him before that you were the fellow who used to go to school with him and saw him at the swimming pool for a minute four years ago?

A. I told him I was a classmate of his.

Q. I beg your pardon?

A. I told him I was a classmate of his.

Q. Did you tell him about the swimming pool?

A. I didn't tell him on the telephone.

Q. And he invited you over?

A. He did not.

Q. What time did you get there?

A. Sometime during the—their supper.

[fol. 1739] Q. How long did you stay there?

A. I would say about an hour. I am not too sure about the length of time but I would say approximately an hour.

Q. Was he glad to see you?

A. He was cordial.

Q. Were you glad to see him?

A. Yes, I was.

Q. Now tell us, what did you talk about? Did you tell

him why you came to see him? Didn't he ask you "Just why out of the clear sky do you pick on me to pay a visit to like this? I never really knew you."

A. He didn't say that.

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. He said to me, "What are you doing in Washington?" I told him, "I am here on an assignment," and I told him I was at the Bureau of Standards in ref—in regard to some work.

Q. Do you know whether Elitcher was in the——

By The Court:

Q. Excuse me. Did you know what he was doing at that time in Washington?

A. He said he was working for the Navy Department.

Q. Did he volunteer that or did you ask him?

A. Well, as we were talking and I told him where I [fol. 1740] worked, when he replied to me he told me where he worked.

Q. Did you ask him in what branch of the Navy he was working?

A. No, I didn't.

Q. Did you ask him what kind of work he was doing in the Navy?

A. He volunteered the fact that he was doing engineering work.

Q. On what, did he tell you?

A. Not specifically.

The Court: Proceed.

By Mr. Saypol:

Q. Of course you hadn't known before what he was doing?

A. I did not.

Q. I mean his employment?

A. I didn't know where he was working.

Q. And I take it that he didn't know what your employment was for?

A. He didn't.

Q. But you told him what yours was during the conversation?

A. Correct.

Q. Had you known of Elitcher's activities in the Young Communist League at City College?

Mr. E. H. Bloch: Well, if the Court please, I think that presupposes a state of facts that is not proven. I do not recollect that Elitcher testified that he was a member of the Young Communist League.

The Court: Oh, yes, he did, he did. That is my recollection.

Mr. E. H. Bloch: I just want to be clarified—I think you [fol. 1741] are right.

The Court: Yes, I am quite sure of that.

Mr. E. H. Bloch. All right, I will withdraw my objection. your Honor. It was on a purely factual ground.

Q. Had you known——

A. I didn't know whether he was or he was not.

Q. Had you known of any activities on his part in the Communist Party at City College?

A. I didn't know whether he was or was not a member.

Q. Now in the course of the conversation there, was there a time when you asked him to tell his wife to leave the room?

A. I did not ask him to tell his wife to leave the room.

Q. Was there a time when she left the room?

A. What room are you talking about?

Q. The room that you were in.

A. I was in two rooms.

Q. I beg your pardon?

A. I was in two rooms.

Q. Was there a time when either at your request or at his request Mrs. Elitcher left your presence and left you alone?

A. There was no time that I requested it or he requested his wife to leave the room, but there was a time when she went in to do the dishes, from the living room to the kitchen.

Q. Now then, what did you talk about?

A. Talked about my job, where I was working at, the [fol. 1742] fact that he was working for the Government, what his rating was, what my rating was. We talked about Washington, D. C.; we talked about my family, and I asked him about his health and then we talked about the topics of the day.

Q. Well, what were the topics of the day?

A. The war.

Q. And what did you talk about in connection with the war?

A. What the latest news was about the war.

Q. Well, what was the latest news?

A. I don't remember at this time what was the latest news.

Q. That was at or about the time of the invasion—does that perhaps refresh you as to the topic which was discussed between you?

A. I can't recall if it was at or about the time of the invasion. It may have been before; it may have been after.

Q. Now you remember while testifying before in response to your lawyer's questions as to conversations at your home sometime in January of 1945 with the Greenglasses, you testified about the comparative systems of justice in this country and in Russia. Do you recall that?

A. I didn't testify that we had a conversation at my house about the comparative systems of justice. I was asked my opinions on it.

Q. Wouldn't that imply a conversation if somebody asked your opinion?

A. No; there may have been——

[fol. 1742-A] Mr. E. H. Bloch: I object to the form of the question, your Honor.

Mr. Saypol: Well, all right, we won't quibble about it.

Q. You were asked your opinion, and did you give your opinion?

A. I did, sir.

Q. How did you do that, in writing or by telegraph or did you talk?

A. I just talked on the stand here.

[fol. 1743] Q. Did you talk at the house in January, 1945, about the system of justice here and the system of justice in Russia and the system you preferred?

A. That is right.

Q. So you did talk about it, didn't you?

A. I don't remember if it was that specific conversation at that time or another time, but I talked about these things.

By The Court:

Q. Was that perhaps the topic that was discussed between you when you talked with Elitcher at his home in 1944, the year before?

A. No, it was not.

Q. Was that one of the topics that was discussed at the family gatherings?

A. It was one of the topics we discussed.

By Mr. Saypol:

Q. And was there also discussed so-called Russian advances?

A. I don't know what you mean, Mr. Saypol.

Q. Well, I am just reading from my notes as you testified a little while ago, about conversations you had at your home with the Greenglasses in January, 1945. Didn't you tell us before that you expressed your opinion about Russian advances?

A. That is right.

Q. Advances in the Russian way of life, is that what you meant?

A. No. I am talking about advances their army made [fol. 1744] in the winter campaign against the Nazi army.

By The Court:

Q. I believe you were referring, at least I understood your answer to refer, to the advances in the economy and benefit to the people.

A. Oh, yes, that is another point I expressed.

By Mr. Saypol:

Q. You did talk about that in January, 1945, in the Greenglasses' household, or rather in your household, is that right?

A. I talked about it.

A. Did you perhaps talk about that with Elitcher in 1944?

A. I don't recall talking about it with Elitcher.

By The Court:

Q. Did I understand you to say here, or if you didn't I ask you the question; Did you in 1944 or 1945 state, and I believe you stated on direct but I am not quite sure, that you had thought Russia was carrying the brunt of the war at that point?

A. That is right, sir.

By Mr. Saypol:

Q. Of course, you didn't say that in 1945, did you after the invasion?

A. No, I wouldn't say that in 1945.

Q. That opinion you probably expressed before the invasion?

A. That is correct.

Q. In other words, you were advocating, too, the second [fol. 1745] front?

A. Well, here is what I would like to state, Mr. Saypol, that I still felt that the Russians contributed the major share in destroying the Nazi army. That is my opinion even after the invasion.

Q. And Russia as an antagonist and a participant in the war you felt was entitled to more help than the allies were giving to her?

A. I didn't say that, Mr. Saypol.

The Court: He is asking you whether you felt that.

The Witness: No. I felt that Russia should get as much help as possible to help them defeat the Nazis.

By The Court:

Q. Well now, did you feel that if Great Britain shared in all our secrets that Russia should at the same time also share those secrets in 1944 and 1945?

A. My opinion was that matters such as that were up to the Governments, the British, American and the Russian Governments.

Q. You mean the ultimate decision?

A. Yes.

Q. Well, what was your opinion at that time?

A. My opinion was that if we had a common enemy we should get together commonly.

By Mr. Saypol:

Q. Was that predicated on your feeling that we were [fol. 1746] not doing enough for Russia?

A. It wasn't predicated on that.

Q. What was it predicated upon?

A. My opinion——

Q. What did you form your opinion on? What basis?

A. Mr. Saypol, I am no expert on those matters or authority on those matters.

Q. Well, what did you know about the subject to express an opinion? Did you talk about it with others?

A. I read it in the newspapers.

Q. Did you talk about it in groups?

A. Socially, when people came over to the house.

Q. Did you talk about it perhaps in any Communist unit that you might have belonged to?

A. I refuse to answer that question on the ground that it may incriminate me.

Q. Now, in connection with your express opinions on the Russian situation with relation to the war effort, did you do——

The Court: I want the jury to understand that they are to draw no inference from the witness' refusal to answer on his assertion of privilege. Proceed.

Q. Did you do anything else besides talk in respect to your feeling, your opinion about the Russian position in the war?

A. I didn't do anything else but express my opinion. [fol. 1747] Q. You told us a little while ago about that time your wife operated her typewriter in connection with civil defense, is that right?

A. That is correct.

Q. Did she operate that typewriter in support of anything else? Any other movement besides your union movement?

A. Civil defense and the union.

Q. Any movement allied with the Russian war effort?

A. Not to my knowledge.

Q. Did you ever make any contributions to the Joint Anti-Fascist Refugee Committee?

A. Yes, I believe I did.

Q. That is known to be an organization deemed subversive by the Attorney General.

Mr. E. H. Bloch: I object to the question upon the ground that it is improper; it is inflammatory and has nothing to do with the issues.

The Court: I sustain the objection.

Mr. Saypol: May I submit to the Court that pursuant to Presidential Executive Order No. 9835 it has been so classified by the Attorney General.

The Court: I don't think that is a subject matter that you ought to go into.

Q. Did you do anything more than that?

A. I don't understand what you mean, Mr. Saypol.

Q. Did you do anything more than contribute? Did [fol. 1748] you exercise your personal efforts by speaking or writing? Anything like that?

A. I don't understand what you mean, Mr. Saypol.

Q. Did you ever go out and collect any money for the Joint Anti-Fascist Refugee Committee?

A. When are you talking about?

Q. I don't know. You tell me.

A. I don't recall collecting any money, but I recall contributing money.

Q. Do you remember at the time the agents arrested you? Did you ever see this before?

Mr. Saypol: May this be marked for identification in some way, Mr. Schaefer.

(Marked Government's Exhibit 27 for identification.)

Q. Do you remember when the agents arrested you and they took that out of your house?
A. That is correct.

Mr. Saypol: I offer it in evidence.
Mr. E. H. Bloch: I have no objection.
The Witness: I would like——
Mr. Saypol: Just a minute.
The Witness: (Continuing) —to talk about this a moment, your Honor, if it is possible.
The Court: First let us have it marked and then you can talk about it.

(Government's Exhibit 27 for identification received in [fol. 1749] evidence.)

Mr. Saypol: May I read the label to the jury?
The Court: Yes.
Mr. Saypol: Will it be conceded that this is a can commonly used by solicitors for contributions?
Mr. E. H. Bloch: I will so concede.
Mr. Saypol: And the can reads on the label "Save Spanish Republican Child, Volveremos, We will return, Joint Anti-Fascist Refugee Committee, 192 Lexington Avenue, Suite 1501," and there is a notice on the back indicating that the City of New York permits these cans to be used for solicitation.

By Mr. Saypol:

Q. So that perhaps you did a little more than just contribute?
Mr. E. H. Bloch: Just a second, if your Honor please.
Q. Is that so?

Mr. E. H. Bloch: Wait a second: I object to the question. It presupposes a state of facts not proven. The can may have been found——
The Court: Hold the question a moment. The witness wanted to say something.

The Witness: That is not so, Mr. Saypol.

The Court: What did you want to say?

[fol. 1750] The Witness: Can I have the question, sir?

The Court: Give him the question.

(Question read.)

"Q. Do you remember when the agents arrested you and they took that out of your home?"

The Witness: The date on this case is May 20, 1948. I hold insurance in the International Workers Order, and they sent this can to me to ask me to solicit funds. I never solicited funds. I just made a contribution to them.

By Mr. Saypol:

Q. Do you know that the International Workers Order is now the subject of a lawsuit across the way in the Supreme Court?

Mr. E. H. Bloch: I object to the question upon the ground it is incompetent, irrelevant and immaterial and not related to the issues in this case.

By The Court:

Q. What is the International Workers Order?

A. An insurance organization, your Honor.

Q. Is it a public insurance company?

A. Right, sir.

By Mr. Saypol:

Q. Is it not a fact that it is a Communist organization exclusively?

Mr. E. H. Bloch: I object to the form of the question.

[fol. 1751] The Court: The form is all right.

Mr. E. H. Bloch: Do you want his opinion on it?

The Court: Well, he certainly doesn't want mine.

Mr. E. H. Bloch: He acknowledges that he belongs to it.

The Witness: That is right, sir.

Mr. E. H. Bloch: I think, if the Court please, we are really going off the issue.

The Court: Oh, no.

Mr. E. H. Bloch: All right. I will withdraw my objection.

The Court: Very well.

The Witness: I don't believe it is a communist organization.

Q. Is it not a fact that it is an organization whose members exclusively are members of the Communist Party?

Mr. E. H. Bloch: I object to that upon the ground that Mr. Saypol is bound by the witness's answer.

The Court: I don't know whether the first question was answered. You had better read back the question before and the answer.

(The following questions and answers read;)

"Q. Is it not a fact that it is a communist organization exclusively?

[fol. 1752-A] A. I don't believe it is a communist organization.

"Q. Is it not a fact that it is an organization whose members exclusively are members of the Communist Party?"

[fol. 1752] Mr. E. H. Bloch: I withdraw my objection.

The Court: Did you hear the question?

The Witness: I heard the question, your Honor. I don't know if it is a fact or it isn't a fact.

By Mr. Saypol:

Q. How did you join it? What were the circumstances of your joining it?

Mr. E. H. Bloch: I object to this upon the ground that we are going far afield, your Honor.

A. I don't remember.

Mr. E. H. Bloch: Pardon me. I think it is a collateral matter.

The Court: All right, he doesn't remember.

Q. When did you join it?

A. I don't remember when I joined it but I held insurance in it for many years.

Q. Who invited you to join it?

Mr. E. H. Bloch: I object to that.

A. I don't remember.

Q. How did it first come to your knowledge?

A. Somebody solicited my membership.

Q. Who was that comebody?

A. I don't remember.

Q. Is that somebody perhaps a member of the Communist Party?

A. I have no idea, no.

Q. Where were you solicited?

A. I don't recall.

[fol. 1753] Q. How many years have you been a member?

A. I don't know how many years I have been a member.

Q. What kind of insurance do you have in that order?

A. I hold $5,000. life insurance.

Q. Where is the policy?

A. The policy?

Q. Yes.

A. In my home.

Q. Whom do you send premiums to?

A. To the secretary of the Lodge.

Q. Where is his office?

A. I send it to his home address.

Q. Where is that?

A. Somewhere in Brooklyn. I don't remember.

Q. You mean you pay the insurance to the secretary of the Lodge at his home?

A. Well, he enters the insurance at the office.

Q. Hasn't the International Workers Order a headquarters, an office, a business office?

A. I guess it does.

Q. Where is that?

A. I don't know, sir.

Q. You say the policy is at your home?

A. The policy for myself and my wife is at my home.

Q. Will you be good enough to bring it with you when you come here next Monday morning?

A. I don't have it.

Q. Where did you say it is?

A. It was at my home.

[fol. 1754] Q. Could you arrange if I send somebody with you to get it so that we can have it here and look at it?

Mr. E. H. Bloch: Now, if the Court please, I would like to make this statement: I want to comply with Mr. Saypol's request, if possible. The Rosenbergs lived at 10 Monroe Street, and after Mrs. Rosenberg's arrest their home was abandoned. At any rate, I had the lease cancelled and their furniture was disposed of.

Mr. Saypol: Do you have the policy, Mr. Bloch?

Mr. E. H. Bloch: That is what I was going to say. It may very well be that Mr. Rosenberg's relatives brought some of his personal papers.

Mr. Saypol: Will you make an effort to get me the policy?

Mr. E. H. Bloch: I will try to get it for Mr. Saypol. This witness hasn't the policy.

Mr. Saypol: That is all I ask for, the policy; not a speech.

Mr. E. H. Bloch: Well, I don't want any implications that this witness was trying to conceal from this Court and the jury the policy itself.

By Mr. Saypol:

Q. Well, now, do you remember yesterday when you were examined by your counsel, you testified to your connection [fol. 1755] with the United States Army, with the Signal Corps, is that right?

A. That is correct.

Q. You weren't a soldier, were you?

A. I was not.

Q. You were a civilian employee?

A. That is right, sir.

Q. Do you remember being asked this question by your lawyer and giving this answer at page 1569:

"Q. How long did you continue working for the United States Government?

"A. Up until February 1945."

Do you remember that?

A. Yes, sir.

Q. Were you asked that question and did you give that answer?

A. I believe so.

Q. Then you were asked this question and you gave this answer.

"Q. Were you then separated from your job with the United States Government?

"A. I was."

Do you remember that?

A. That is right.

Q. What really happened to you, you were dismissed, were you not?

A. I was suspended.

Q. Were you then dismissed?

A. That is correct.

Q. And what was the reason?

A. It was alleged that I was a member of the Communist Party.

[fol. 1756] Q. That is, the Secretary of War in the interest of national defense directed that you be separated from the service?

Mr. E. H. Bloch: I object to the form of the question.

The Court: I will sustain the objection. You have his answer.

Mr. Saypol: Will your Honor just bear with me for a moment?

The Court: Yes.

Q. Do you remember on March 28, 1945, having been summoned before an officer of the Signal Corps and having been advised of the charges against you?

A. March? I don't recall the exact date.

Q. Is it not a fact that on March 28, 1945, you were summoned and in the presence of another officer of the Army, Captain Henderson, advised you of the action that was being taken against you to separate you from the service because of information reaching the office that you were a Communist Party member?

A. I can't recall the date exactly.

Q. Can you recall the fact of being advised, that that information that you were a member of the Communist Party was imparted to you?

A. I was down at Captain Henderson's office on one occasion.

[fol. 1757] Q. Is it not a fact that on that occasion you were told you were being removed from Government service because of the fact that information had been received that you were a member of the Communist Party?

Mr. E. H. Bloch: If the Court please——

A. It alleged——

Mr. E. H. Bloch: If Mr. Saypol wants a concession I will concede right now that this witness was removed from Government service upon charges that he was a member of the Communist Party.

The Court: All right.

Q. Were you a member of the Communist Party?

A. I refuse to answer on the ground that it might incriminate me.

Q. Is it not a fact that in February 1944 you transferred from Branch 16-B of the Industrial Division of the Communist Party to the Eastern Club of the First Assembly District under Transfer No. 12179?

A. I refuse to answer.

Q. Is that one of the charges Captain Henderson read to you?

A. That is.

Q. Did Captain Henderson advise you at that time that information had been received that while a student at City College you signed a petition for the granting of a charter to a chapter of the American Student Union, which has [fol. 1758] been reported to be or had been under the influence of communists?

A. He informed me.

Q. Is that the fact?

A. I don't remember.

The Court: Mr. Saypol, I suggest that you get to your destination on this. I don't think that we ought to pur-

sue this particular line in view of the witness's expression that he is going to assert his privilege on the entire line.

Mr. Saypol: Well, a moment ago, if the Court please, he admitted and testified from the stand that he had been a member of the American Student Union. Now he says he doesn't remember it a few minutes later.

The Court: Very well.

Mr. E. H. Bloch: I don't think the witness answered that.

The Court: Don't characterize the answer. Leave that for the jury. I think you understand the point very well, Mr. Saypol.

[fol. 1759] By Mr. Saypol:

Q. Is it the fact——

Mr. Saypol: I would want to ask your Honor for a recess in just a moment; I want to finish this topic.

The Court: All right.

Q. Is it not the fact that you were removed from that position for that reason—for these reasons, that you were a member and you were active in the party?

Mr. E. H. Bloch: I have so conceded, your Honor.

Mr. Saypol: All right.

Q. Now in connection with those charges——

The Court: Wait, let us get this clear. You did not concede, as I understand it, that he was removed because he was a member. You concede, as I remember, that he was removed because of the charges.

Mr. E. H. Bloch: That is correct.

The Court: Well, you just said that you will concede that he was a member.

Mr. E. H. Bloch: Oh, no, I do not mean that at all. I cannot make any such concession at all.

The Court: I just want to make sure that you understood what you are conceding.

Mr. E. H. Bloch: Well, I am conceding this, that this witness was removed from Government service upon certain [fol. 1760] charges that were preferred against him under the authority of the Secretary of War.

The Court: I understand that.

Mr. E. H. Bloch: And that one of those charges was that he was a member of the Communist Party.

The Court: Very well.

Mr. Saypol: The state of the record is that when I asked a direct question now the witness raises the question of privilege and refuses to answer.

The Court: That is right.

Q. Now at that time in response to these charges did you file an answer, Mr. Rosenberg?

A. I did.

Q. And do you remember having, on April 3, 1945, made the following statement in a communication to the Commanding Officer of the Newark Signal Corps, "3. On 28 March 1945, I appeared before the Intelligence Officer of the Newark Signal Corps Inspection Zone and copied excerpts from a written statement of charges read to me by Captain Henderson in the presence of two other officers.

"4. Those charges allege, first:

"'That you are a communist member. It is alleged that you transferred from Branch 16-B Industrial Division of Communist Party to the Eastern Club of the 1st Assembly District, N.Y., under Transfer No. 12179, in February 1944.'"

[fol. 1761] And then you go on to say: "I am not now, and never have been a communist member. I know nothing about communist branches, divisions, clubs or transfers. I never heard either of the Division or the Club referred to. I had nothing to do with the so-called transfer. Either the charge is based on a case of mistaken identity or a complete falsehood. In any event, it certainly has not the slightest basis in fact."

Did you make that answer to those charges, yes or no?

A. I refuse to answer a question on the contents of that letter.

Q. I ask you whether you made that answer to those charges as I have read them to you?

Mr. Bloch: May I advise the client, your Honor, that he should answer that question yes or no.

The Court: Very well.

A. Yes, I sent the letter in answer to those charges.

Q. Was that answer true at the time you made it.

A. I refuse to answer.

Mr. E. H. Bloch: Now I desire to advise the client that at this point he can exercise his privilege.

The Court: What privilege?

Mr. E. H. Bloch: I assume the privilege against self-incrimination.

[fol. 1762] The Court: Now I am not quite clear on what particular phase does he claim he is incriminating himself; is it on the basis of communism or on the basis of previous perjurious statement or something of that character?

Mr. E. H. Bloch: Not a previous perjurious statement, although I think that also might be a good ground. You see, a perjury only goes—let me put it this way——

The Court: That would not be a good ground.

Mr. E. H. Bloch: Yes, it might if it relates to another perjury that I think——

The Court: It would be directly related to this one.

Mr. E. H. Bloch: At any rate I didn't want to raise any question about perjury. This is a legal argument, I assume, but I think on the question of communism——

The Court: All right, let me hear the question read again.

(Record read.)

Mr. Saypol: I press for an answer.

Mr. E. H. Bloch: Now, if the Court please, may I be heard?

The Court: Yes.

[fol. 1763] Mr. E. H. Bloch: Is the witness exercising his privilege?

The Witness: I am, sir.

Mr. E. H. Bloch: All right, now I would like to be heard in support of sustaining of the privilege.

Mr. Saypol: If that is so perhaps the Court may desire to take a recess at this point and we will continue because it will probably take a few minutes.

The Court: All right. Ladies and gentlemen, you will be asked to return Monday morning at 10:30. In the meantime I want to wish you all a very happy Easter and a pleasant week end.

(Jury excused.)

(The following proceedings were had in the absence of the jury:)

Mr. Saypol: I would like to continue just a minute, if the Court is agreeable. I do not think it will make any difference.

The Court: Just a moment. Let us have some order in the court.

The Clerk: Spectators, please be seated.

The Court: The court is not in recess.

Mr. Saypol: Does the Court desire to hear the argument at this stage?

The Court: No, but I will say this, Mr. Bloch, that you might guide yourself accordingly. Mr. Saypol thinks that we might wait until Monday morning for a definite ruling. On this particular question I will overrule the privilege.

Mr. E. H. Bloch: Well, may I be heard then?

Mr. Saypol: I would like to hear what his position is.

Mr. E. H. Bloch: Yes.

The Court: Let me hear you.

Mr. E. H. Bloch: He is being asked now whether the answer to this question was false or true.

The Court: That is right.

Mr. E. H. Bloch: Now let us assume that he answers it was false.

The Court: Yes.

Mr. E. H. Bloch: If he answers that it was false he impliedly admits that he was a member of the Communist Party. If he impliedly admits that he was a member of the Communist Party, then, of course, I think he comes within the Blau case and the whole line of cases which finally culminated.

The Court: Oh, wait a minute now, let us get something clear. I understand the rationale of the Blau case. Now we can speak rather more candidly with the jury out of the [fol. 1765] room.

Mr. E. H. Bloch: Right.

The Court: And the Blau case was a question of contempt of Congress, and the witness there was asked whether she was—that is Patricia Blau—whether she was a member of the Communist Party, and the Court there held that it was merely a link in the chain which would ultimately end up in criminal proceedings, but you have a different problem here. Here you have a problem of a criminal case where a defendant has taken the stand and the question is, how much of his privilege against self-incrimination does he waive when he takes the witness stand?

Mr. E. H. Bloch: Correct.

The Court: That is your theory.

Mr. E. H. Bloch: Under the Johnson case.

The Court: Under the Johnson case.

Mr. E. H. Bloch: Right, and I say and I contend, your Honor, in the first place this type of question goes to collateral matter. The charge here is espionage.

The Court: Yes.

[fol. 1766] Mr. E. H. Bloch: What you are really trying to do at least.

The Court: Oh, no. Let us get something clear there. I am not for a moment—I wouldn't entertain this if I believed it was collateral; I wouldn't entertain it for the purpose of impeaching his credibility as a witness. I believe that in view of the foundation which the Government has laid that it is relevant.

Now, the question is whether or not I should sustain the privilege. I haven't been called upon to do so.

Mr. E. H. Bloch: I understand.

The Court: I think Mr. Saypol has been very gracious in not pressing the question and I think he probably exercises good judgement. Whether I would sustain the privilege or not will remain to be seen, if it were pressed.

Mr. E. H. Bloch: I understand.

The Court: But you are now on a different subject entirely, and he is asking him a question as to whether something he said previously is true or false, and I think I see your point. Your point is that if he says it is false, he is in effect admitting that he is a member of the Communist

Party, so it falls in the same category that the other [fol. 1767] question did. We won't rule on that now. I ask you to think about that over the weekend.

Mr. E. H. Bloch: May I just make this additional statement, Mr. Saypol, so that you get my complete state of thinking at the present time?

With all the limitations of the assertion of privilege, by reason of the fact that this defendant has taken the stand and therefore comes within the purview of the Johnson doctrine and the cases following, I also think that on this question of possible perjury, his assertion, is well founded, for this reason:——

The Court: No, if that were so, then any witness, ever caught in an inconsistent answer, will be able to say, "Oh, no, I assert my privilege", because it might incriminate him.

Mr. E. H. Bloch: No, but you see, it is no defense to try to hide behind any perjury, where the perjury is committed in the very proceeding where the privilege is asserted. But here he is asking him to admit to a possible perjury in some other transaction.

The Court: No.

Mr. E. H. Bloch: In other words, your Honor, suppose Rosenberg were on the stand and I asked him, "Didn't [fol. 1768] you commit perjury in 1940, when you swore before this and this and this?"

The Court: No, it would be something directly related to this case, and that it would be something upon which the jury can determine whether he is telling the truth, whether he is telling it today or whether he is telling the truth then, and something that can be submitted for their determination, and in that I think it relates to the case.

But I want to ask you a question: Do you agree—do I hear something sotto voce there?

Mr. E. H. Bloch: Mr. Phillips is trying to help me out.

The Court: It is not very sotto and it is not very voce.

Do I understand that you are in agreement with the rationale of the Johnson case, and that is, when a defendant takes the witness stand he may be cross-examined on any matter which is relevant to the issues, even if the answer will tend to incriminate him?

Mr. E. H. Bloch: I think that generally speaking you have stated the law. What my contention is, and of course here you and I, I suppose, don't see together, is that this particular question relates to the commission of an independent crime, not related to it.

[fol. 1769] The Court: I get your point and I will not say that it is wholly without merit. I think there is some merit to your argument, and I am sure Mr. Saypol and his satellites at the counsel table will think about it over the weekend.

Mr. E. H. Bloch: I will, too, your Honor. I have got some law on it. I did some research before the trial. I expected that this question might come up and I tried to prepare myself.

The Court: I want you to know that the Court did a substantial amount of research on the problem, too, in anticipating the question.

Mr. E. H. Bloch: I have no doubt about that.

The Court: And I dare say that it is not one of these principles of law that you can point your finger at and say, "There is the answer." You seem to have it in one case; then it seems to be dissipated by something else the Court says in another case.

Mr. E. H. Bloch: I think that is correct.

The Court: And I think that it calls for a great deal of caution on the part of the trial judge, so that he doesn't jeopardize a case as important as this with a ruling that might prove to be error.

The Court: Well, at any rate, we will be here Monday [fol. 1769-A] morning. Pleasant weekend.

Mr. Saypol: I am prepared to press the question.

(Adjourned to March 26, 1951, at 10.30 a.m.)

[fol. 1770] New York, March 26, 1951; 10.30 o'clock a.m.
Trial resumed.

(In the absence of the jury.)

Mr. Collenburg: I am here on behalf of the Mexican Government. Last week a subpoena du-es tecum which I have here was served upon the Consulate here to produce certain records in the Court. The Government asked me to appear

specially to protest this service and to ask that the subpoena be vacated.

At the same time the Ambassador says that if a proper request is made for these documents through official channels he will be very happy to comply with such request,

The Court: What is your name?

Mr. Collenburg: Mr. Collenburg of Hardin, Hess & Eder.

Mr. Kuntz: It becomes academic, your Honor. I am not going to even introduce it.

The Court: You have no objection to my dismissing it? [fol. 1771] Mr. Kuntz: No.

The Court: The subpoena is being withdrawn.

Mr. Saypol has asked that we delay the opening of court this morning. He is engaged before a grand jury.

(Conference at the bench between Court and counsel.)

(The following took place at the bench.)

The Court: Do I understand that the requests to charge that have been submitted by E. H. and Alexander Bloch on behalf of Julius Rosenberg and Ethel Rosenberg are joined in by you Mr. Phillips, on behalf of your client Sobell?

Mr. Phillips: Yes, with the same force and effect as though submitted by us.

The Court: Where are your requests?

Mr. Lane: They are probably on the way down your Honor.

(Mr. Saypol appeared.)

Mr. Saypol: Will your Honor excuse me for my apparent dilatoriness? I was before the grand jury.

The Court: Yes, I so stated before.

(The following took place in the presence of the jury.)

The Court: I am sorry for the delay this morning, but [fol. 1772] we had a little lawyer talk. I am sure you understand.

JULIUS ROSENBERG, resumed the stand.

Mr. Saypol: Shall I proceed?

The Court: Yes.

Mr. Saypol: At the recess on Friday, if the Court please, the posture of the case was this: There was before the Court my motion to direct the witness to answer a question in relation to his prior denial of membership in the Communist Party and his assertion here of the privilege against self-incrimination.

I have given some consideration to that over the weekend and premised on the main issue in the case as charged in the indictment and an expression of the same character as that of the Court to the effect that this issue ultimately should be resolved by the jury, as to the guilt or innocence based on the indictment rather than on the collateral, or I should say the related but not primary issue of membership in the Communist Party, I will withdraw my request at this time, and I do so also in the interest of expedition.

The Court: Very well.

[fol. 1773] Cross examination continued

By Mr. Saypol:

Q. Mr. Rosenberg, do you know a man by the name of Oscar Vago?

Mr. E.H. Bloch: If the Court please, I object to the question as incompetent, irrelevant and immaterial unless the prosecution is seeking to elicit from this witness some testimony that would relate this particular individual directly to the issues in this case.

The Court: I don't know whether it will or not, and if you are going to say to me now, Mr. Bloch, that the Government cannot ask this witness any questions which will have some bearing upon credibility I am going to tell you that you are wrong.

Mr. E.H. Bloch: Well, if it is for the purpose of attacking credibility I will withdraw my objection. I just don't know what it is for.

The Court: Let us wait and see.

Mr. E.H. Bloch: May I withdraw my objection for the moment then.

[fol. 1774] A. There was a man by the name of Oscar Vago at West Street jail.

Q. Is that the first time you knew him?

A. That is the first time I knew him.

Q. The first time you knew anything about him?

Mr. E.H. Bloch: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled. How do you know?

Mr. E.H. Bloch: He just said it was the first time he knew him.

The Court: Well then, you are not objecting on the ground it is immaterial. You are objecting on the ground that he has already answered the question.

Mr. E.H. Bloch: All right, he answered.

The Court: Overruled.

Mr. E.H. Bloch: I respectfully except.

A. I met him at West Street jail.

Q. Did you ever hear about him before?

A. No, sir; I never did.

Q. Did you ever talk to anybody about him before?

A. No,sir.

Q. You testified on direct examination that on one occasions when the Sobells visited your home at 10 Monroe Street, there was present a woman by the name of Vivian Glassman?

A. That is correct.

[fol. 1775] Q. How long have you known her?

A. I don't know the exact length of time, but she was introduced to my wife and myself by Joel Barr, a classmate of ours.

Q. Where was the introduction made?

A. I cannot recall, Mr. Saypol.

Q. When was the introduction made?

A. I don't remember the exact year, but it has been many years ago.

Q. At what kind of a gathering was the introduction made?

A. I don't believe it was a gathering, sir. It may have been at the union headquarters.

Q. Since you first met her, how often did you see her?

A. In recent years? Will you specify the time, Mr. Saypol?

Q. You tell me when you first met her, then, if you can't answer that question.

A. Well, I told you that I don't know exactly when I first met her.

Q. Well, you say it might have been at union headquarters, and I think that you had no association with the union before 1940 or '41; is that so?

A. I had an association with the union since 1939, the year I graduated.

Q. All right, since 1939 how often have you seen her?

A. On and off?

Q. Once a year? Twice a year? Fifty times a year? How often?

A. A number of times one year, more often the next [fol. 1776] year.

Q. Where did you see her aside from your home?

A. Well, she was Joel Barr's sweetheart, and he brought her over to my house a couple of times. I might have seen her at a musicale; I might have seen her at his house.

Q. When did Joel Barr leave the country?

A. I don't know exactly, sir, but it was either the end of '47 or the beginning of '48.

Q. Since that time have you seen Vivian Glassman?

A. Yes, I have.

Q. How often?

A. She came over to our house on a number of occasions.

Q. Did you see her any other places?

A. I believe she was over my shop once.

Q. Any other places?

A. I don't recall, sir.

Q. Did you ever see her at Communist clubs——

Mr. E. H. Bloch: Objected to.

Q. —Communist gatherings?

Mr. E. H. Bloch: Objected to as incompetent, irrelevant and immaterial.

The Court: Well, strike out "Communist gatherings;" did you ever see her at any gatherings?

The Witness: I only saw her at my house, as I said, once [fol. 1777] at my shop; I believe, and that is about all I can recall.

Q. How often did you see her in 1950?

A. I would say she has been over to our house a number of times.

Q. How often?

A. I can't be specific. I would say a number of times.

Q. When was the last time that you saw her?

A. I don't recall. It may have been a couple of months before I was arrested.

Q. Could it possibly be a couple of weeks before you were arrested?

A. I don't know, sir.

Q. Could it possibly be more than a week before you were arrested?

A. I can't recall.

Q. What did you talk to her about the last time you saw her?

A. Well, she is a social worker and my oldest boy has been very emotionally disturbed for quite a number of years, and she used to work at the Jewish Board of Guardians, and I discussed the problem of my oldest boy with her.

Q. When did that discussion take place?

A. Almost every time I saw her.

Q. As the result of those discussions, did you subject your boy to any treatment?

A. Yes, we did.

Q. Where?

A. At the Jewish Board of Guardians.

Q. What else did you talk to Vivian Glassman about?

[fol. 1778] A. I had nothing else to talk to her about but that.

Q. Did you ever give her any money?

A. No, sir; never did.

Q. Did you ever send her on a trip to Cleveland?

A. No, sir; never did.

Q. You are positive of that?

A. I am positive.

Q. Did you ever hear of any discussion of that before?

A. No, sir.

Q. Is this the first time you heard any suggestion that you gave her some money?

A. That is correct.

Q. Isn't it the fact that you gave her $2,000. to take out to somebody in Cleveland?

A. That is not the fact, Mr. Saypol.

[fol. 1779] Q. You are positive of that?

A. I am positive.

Q. When did you first hear any discussion about that?

A. You just mentioned it right now.

Q. Never heard about it before?

A. I might have read it in the newspapers, I don't know.

Q. When?

A. I don't know.

Q. How long ago, since your arrest or before your arrest?

A. Mr. Saypol, I read the newspapers a few weeks ago in reference to a case that you tried to ask me a question about. I believe that is the time I read it, a week or two ago.

Q. And what newspaper, do you remember?

A. The New York Times.

Q. And what was the story as you read it?

A. I am sorry, sir, I can't remember.

Mr. E. H. Bloch: Wait, just a second. I object to this entire line of questioning.

The Court: He says he doesn't remember. No, no, I am not going to sustain your objection to the entire line. I do not know whether it is relevant or not.

Q. You say——

Mr. E. H. Bloch: Just pardon me, your Honor. I want to make my objection specific. I submit that on this line of questioning the prosecutor is making this witness his own. [fol. 1780] This was not covered by the direct, and I submit that the question has been asked and answered at least on three or four occasions.

The Court: Oh, Mr. Bloch, come, come. You know that in cross-examination a cross-examiner has the right to question the witness not only about relevant matters but about matters which go to credibility.

Mr. E. H. Bloch: That is correct but when that happens, your Honor, then I say he is bound by the witness' answer and I say that the witness has answered at least three or four times with reference to Vivian Glassman——

The Court: Objection overruled.

Mr. E. H. Bloch: —and I say this is obliquely a repetition.

The Court: Very well, your objection is overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Now you say you read it in the New York Times, is that right?

A. I don't know if I read exactly that which you mentioned—you asked me a question if I gave her money and I said I did not.

Q. You said you read something in the newspapers about the fact that you had given Vivian Glassman money.

A. Not that I had given.

Q. I beg your pardon, I do not hear you.

[fol. 1781] A. I did not say that.

Q. What did you say?

A. I said that I did not give her money.

Q. You say you did not read it in the New York Times. Now where did you read it?

A. I said I read about the question of Vivian Glassman, as a case, a recent case in the New York Times, that is all I said, sir.

Q. Didn't you say something about in the New York Times, about a question that I was going to ask you, about giving money to Vivian Glassman?

A. I did not say that. I did not mean that to be my answer.

Q. You say now you didn't say it or you say now you said it and you did not mean it? Which is it?

A. I say that I did not say I read it in the newspapers that Vivian Glassman—that I gave Vivian Glassman money.

Q. Where did you hear about it then?

A. You just spoke about it in the court today.

Q. And so I ask you again, is that the first and only knowledge that you have about any suggestion that you gave Vivian Glassman money?

A. That is the only knowledge—

Q. (Continuing.) To go to Cleveland?

A. —that I had that I gave money to Vivian Glassman [fol. 1782] to go to Cleveland.

Q. Never heard about it before and never read it before?

A. Never did.

Q. You know the Sidoroviches, don't you?

A. Yes, I do.

Q. Do you know a man by the name of Alfred Saurent?

A. Yes, I do.

Q. When did you see him last?

A. Possibly the early part of 1950 or the latter part of 1949.

Q. Did you possibly see him in May or June of 1950?

A. I don't recall the exact time I saw him but I don't think I saw him that late in 1950.

Q. Where did you see him?

A. I saw him at his home.

Q. What did you talk to him about?

A. I went to his home to borrow some money from him.

Q. How much did you borrow from him?

A. $300.

Q. When was that.

A. The early part of 1950.

Q. How did you get it—excuse me, did you get it?

A. Yes, I did.

Q. By cash or check?

A. By cash.

Q. Did you pay it back to him?

A. No, I did not.

Q. So you still owe him $300.

A. I owe him more than that.

Q. How much do you owe him?

A. $400.

[fol. 1783] Where did you first meet him?

A. I met him when he was introduced to me by his friend, Joel Barr. I met him in an apartment they were sharing in Greenwich Village.

Q. Where was that?

A. I don't recall the exact name of the street. It begins with an M. It is either——

Q. 65 Morton Street, isn't it?

A. Morton, that is the place, Morton Street.

Q. You couldn't remember that, could you?
A. You just asked me and I told you.
Q. How often had you been to Saurent's home on Morton Street?
A. On a number of occasions.
Q. How often?
A. Not very often.
Q. Alone or with your wife?
A. I believe on one occasion my wife went with me.
Q. Were you over there with Sobell?
A. No, sir.
Q. Were you over there with Elitcher?
A. No, sir.
Q. When did you see Saurent last, did you say?
A. In 1950.
Q. Where is he now, do you know?
A. In Ithaca.
Q. How do you know that he is in Ithaca now?
A. Well, I saw the name of his wife on the witness list, and the address is given as Ithaca, so I figured he is still [fol. 1784] in Ithaca.
Q. You have no other knowledge of his whereabouts, is that it?
A. No, I have no way of knowing.
Q. Don't you know that he is in Mexico?
Motion for mistrial and denial thereof.

Mr. E. H. Bloch: I object to that upon the ground that it is incompetent, irrelevant and immaterial, and highly inflammatory. I move for a mistrial.
The Court: Denied.
Mr. E. H. Bloch: I respectfully except.
Mr. Kuntz: We join in that application, if your Honor please.
The Court: Both motions are denied.
I don't know what the excitement is over, asking whether a witness is in Mexico.
Mr. Kuntz: Now all I have heard so far, although it hasn't concerned us actually—I mean directly—is that by implication, "Do you know this one, did you meet that one, did you see that one"?

Now I might have met Costello and seen him and it doesn't mean a thing—

The Court: And then again it might mean something, too.

Mr. Kuntz: Well, I know but I say a question of that kind is clearly prejudicial. A person says "Do you know he is in Mexico"?; especially when there is no evidence in [fol. 1785] this case that he is in Mexico.

The Court: There is rarely a question that can be asked that isn't prejudicial.

Mr. Phillips: May I ask, if your Honor please, asking this man questions that are purely extraneous to the issue—

The Court: How do you know?

Mr. Phillips: Just a moment.

The Court: How do you know?

Mr. Phillips: Just a moment—in the direct case of the Government, that man's name about whom he is interrogating this witness, never was mentioned. Consequently, in cross-examining him he is cross-examining him as to something which heretofore was not mentioned by anybody in this case.

Now just a moment. To cross-examine him about someone that was never mentioned in this case and then try to discredit that someone by pointing out that that someone is somewhere in Mexico, when all through the trial the word "Mexico," created an atmosphere prejudicial to the defendants, is leading the case by the Government into a channel, and I say deliberately prejudicial to the defendants, knowing that what he is asking is irrelevant to the issues.

The Court: Are you finished?

[fol. 1786] Motion for mistrial and denial thereof.

Mr. Phillips: And therefore I ask for a mistrial.

The Court: Your motion is denied.

Mr. Phillips: I respectfully except.

The Court: Proceed.

By Mr. Saypol:

Q. Do you know a girl or a lady by the name of Carol Dayton?

A. I don't recall that name.

Q. Never heard of it before?

A. I may have, I may not have.

Q. Coming back to the Sidoroviches, was it your testimony on direct that you had no recollection of whether or not Ann Sidorovich was at your house in January 1945 at the time of David Greenglass' furlough when you entertained the Greenglasses at dinner?

A. That's right, sir.

Q. You mean by that that it is possible she was there?

A. I can't recall if she was or wasn't there. She may have been there.

Q. Before that time the Sidoroviches had lived in Chappaqua, New York, hadn't they?

A. That is correct.

Q. I think you testified that they moved to Cleveland?

A. I testified that I received a few Christmas cards from [fol.1786-A] them, with a Cleveland address on them.

Q. A few Christmas cards?

A. That is right.

Q. That means on successive Christmases—at least two—you received Christmas cards?

A. That's correct.

[fol. 1787] Q. Don't you know, Mr. Rosenberg, that the Sidoroviches didn't move to Cleveland until December, 1944?

A. I don't know when they moved there—wait a minute, Mr. Saypol.

Q. Don't you know in 1944—

A. Mr. Saypol, I am talking about—when I said on two Christmases, I am talking about up to 1950; I am not talking up to 1945.

Q. Well now, you say in spite of the fact that the Sidoroviches moved to Cleveland in December, 1944, there was still a possibility that Mrs. Sidorovich was at your house in January, 1945?

Mr. E. H. Bloch: Hold it.

Q. (Continuing) When the Greenglasses were there?

Mr. E. H. Bloch: Now, if the Court please, I object to this question upon the ground that it is premises upon a

state of facts not proven. There is no testimony here that the Sidoroviches moved to Cleveland in December, 1944.

The Court: Well, ask the question. Ask whether the Sidoroviches did.

Q. Once again I ask, isn't it a fact that the Sidoroviches moved to Cleveland in mid-December, 1944?

A. I don't know if it is or it isn't a fact, Mr. Saypol.

[fol. 1788] Q. When did you receive the first Christmas card from them?

A. I don't recall when. I received a couple.

Q. Do you know a man by the name of Dave Engels or Engelson?

A. Yes, I believe I do.

Q. Where did you first meet him?

A. I don't recall when but I know he lives in Knickerbocker Village.

Q. What was his business?

A. I have no idea, sir.

Q. Do you know whether he had any outside activities?

A. He is not a friend of mine, Mr. Saypol. I just met him.

Q. How often did you see him?

A. When I would bunk into him in Knockerbocker Village.

Q. Is that the only place you ever saw him?

A. The only place I recall seeing him.

Q. Could there be other places?

A. I don't know.

Q. Think hard, if you will, and say whether there is another place where you might have met him.

A. That is all I can recollect.

Q. Did you have occasion in 1950 to go to Elmhurst, Queens?

A. No, sir, I don't recall going to Elmhurst, Queens.

Q. Do you recall whether or not you were in Elmhurst, in Queens on Sunday, February 5, 1950?

[fol. 1789] A. I don't recall being there.

Q. Just going to another subject for a moment, you testified in response to your lawyer's questions regarding the time that the agents called upon you and then you came

here to this building and were interviewed. That took place on Friday, June 16, 1950, didn't it?

A. I don't know the exact date. I know it took place on a Friday.

Q. The day after David Greenglass was arrested, wasn't it?

A. That is correct.

Q. He was arrested on June 15th.

A. Then it must have been the 16th.

Q. You were interviewed by Messrs. Harrington and Norton?

A. And another individual.

Q. Then you were arrested on July 17th, about a month later, weren't you?

A. That is correct.

Q. Now, in the intervening months did you see either Mr. Harrington or Mr. Norton or both of them in the vicinity of your shop or your home?

A. I believe one day outside my shop I saw Mr. Harrington looking in.

Q. Did you feel then that you were under su-veillance?

A. I don't know if I was or was not.

Q. Did you think it was unusual to see him looking up at your house?

A. I said outside my shop, Mr. Saypol.

[fol. 1790] Q. Excuse me, didn't see him at your house, but outside your shop? Did you think it was unusual to see an agent of the FBI, after he had talked with you at an interview, looking up at your shop?

A. That is his business, Mr. Saypol, not mine.

Q. What did you think about it?

A. The possibility he was looking for something.

Q. Somebody else?

A. I have no idea, sir.

Q. Not for you?

A. I have no idea what he was looking for.

Q. You were not concerned about his presence outside your shop?

A. No, I wasn't concerned, Mr. Saypol, because I wasn't guilty of any crime.

By the Court:

Q. The question is, did you think about what he was doing there?

A. No, it didn't enter my mind. It was his business.

Q. The fact that you saw an FBI agent looking into your place of business—

A. He wasn't looking; he was across the street from the Pitt Machine works and he was walking by nonchalantly looking in.

Q. That was the same agent who had talked to you?

A. Yes.

Q. You say it made no impression whatsoever upon you?

A. It didn't concern me.

[fol. 1791] Q. I say, it made no impression on you?

A. I know he may have been looking for something.

Q. You didn't think it had anything to do with you?

A. It might have and it might not have, but it didn't concern me.

Q. I am asking you whether you thought it had anything to do with you.

A. Maybe yes and maybe no. It didn't enter my mind as to what his purpose was.

Q. Is that the best answer you could give?

A. Yes.

Q. Maybe yes and maybe no?

A. Yes.

By Mr. Saypol:

Q. You didn't say, perhaps, "Harrington, what are you doing here? Have you got nothing better to do than to hang around here?"

A. It is not for me to tell the FBI what to do, Mr. Saypol.

Q. You know at that time your brother-in-law, David Greenglass, was under arrest?

A. That is correct.

Q. When you came home that night did you say to your wife, "You know, that agent is snooping around again"?

A. No.

Q. Never told her about it?

A. I don't recall if I did or I didn't.

Q. Let us have a little talk about this console table. Is your best recollection that you bought that at Macy's in [fol. 1792] 1944 or 1945?

A. That is about the best I can recall, sir.

Q. Do you remember what day of the week it was that you bought it?

A. Well, I can't recall. It is too many years ago. My recollection is hazy about events.

Q. Suppost you describe the table to us, what color it was.

A. Well, the table was a dark brown.

Q. Mahogany?

A. I don't know if the wood was mahogany.

Q. Mahogany-colored?

A. That is right.

Q. Yes.

A. The table was—the top of the table was about three feet by two feet.

Q. You mean three feet wide?

A. That is right, by——

Q. By two feet from front to back?

A. Right. It had a piano hinge in the center, and the table could open up double. Across the inside of the table there was a bar with a hole in it and there was a little wooden boss that had two holes in it that held the top of the table to the bar, so that when the table was—I mean the cover of the table would swing around at right angles, you could open the table double.

Q. You mean it was an extension table?

A. It wasn't an extension; it was hinged over the top cover of the table.

[fol. 1793] Q. About how high did the table stand?

A. As high as the ordinary eating table. The same height as the table over there (indicating).

Q. How many people could sit around it?

A. When it was opened, you could have about six people sitting around.

Q. When it wasn't used for eating, where was it kept in your apartment?

A. Well, in the beginning days when we first had it, when we had the other table before we shipped it out to California, it was kept in the foyer, and then in the last few years,

I would say the last four years, we used it to eat on, and particularly the last couple of years it had a lot of use for eating on. The top of the table kept falling off because the two wooden screws that held the studs at the top of the table stripped the threads and I used two little match sticks in there to try to keep it tightened.

[fol. 1794] Q. That was the hinged back that used to stand up against the wall, was it not?

A. No*t*, it didn't. Only in the beginning, we used to keep it as a show piece, because it was one of the nicest pieces of furniture we had in the house.

Q. It was the only new piece you had in the house, as a matter of fact?

A. That is correct.

Q. Now, I have got a couple of pictures of tables here, Mr. Rosenberg——

Mr. Saypol: Will you mark this for identification, please?

(Marked Government's Exhibit 28 for identification.)

Mr. Saypol: May I have leave ultimately to substitute a photostat of this exhibit, if the Court please? I borrowed it.

Q. Will you look at these illustrations, Mr. Rosenberg, and tell me which of them most closely resembles the console table you bought for $21. in Macy's, in 1944 or in 1945?

The Court: Is that 28 for identification?

Mr. Saypol: Yes.

Mr. E. H. Bloch: I wonder, Mr. Saypol, whether you would permit me to look at that, so that I can follow?

Mr. Saypol: Certainly.

Q. I don't want you to think that I am trying to show [fol. 1795] you the exact table, Mr. Rosenberg. I just want you to tell me which of those is a console table. That is what I wanted to know.

A. Well, I looked at one notation here. It says "console table," so that is the one that is a console table. But it was much plainer looking than this, Mr. Saypol. This has all the frills and curves in it. It was straight over here (indicating); straight over there (indicating); I don't think it had all these (indicating).

Mr. Saypol: May the record show that the witness' testimony with regard to the table refers to the one bearing the pencilled figure 1.

Q. Well now, No. 2 also is a type of console table, is it not?

A. That's right.

Q. Whereas the other illustrations are those of what you have called "a leaf" table, aren't they?

A. They are leaf tables.

Q. A leaf table is the kind of table you got from the neighbor, that you ultimately shipped back to California.

A. One table.

Q. One broke and one you shipped back?

A. That's right.

Q. At least one and two are illustrations of the type of console table that you have in mind, that you bought in Macy's for $21.?

A. That's right, sir.

[fol. 1796] Mr. Saypol: I offer this in evidence. Mr. Bloch has seen it. I take it there is no objection.

The Court: All right.

(Government's Exhibit 28 for identification received in evidence.)

Mr. Saypol: May I put this before the jury?

The Court: Yes.

(Exhibit shown to jury.)

Q. Now, you say that the illustrations, No. 1 and 2 represent the console table?

A. Doesn't represent it.

Q. Look like the console table that you bought?

A. Illustrations 1 and 2 is a console table.

Q. Well, you say that your table was much plainer than these?

A. That's right; looked different than these.

Q. Now, do you remember who the salesman or the saleslady —?

A. Mr. Saypol, I can't remember a thing like that.

Mr. E. H. Bloch: May I make a statement at this time, Mr. Saypol, with regard to the console table.

The Court: No, no.

Mr. E. H. Bloch: All right.

The Court: This is cross-examination, Mr. Bloch.

The Witness: Mr. Saypol, could I say something on [fol. 1797] that? I have asked my attorneys to have the Macy's people go through their records and files, and I am sure if the Government request- them they will find a sales slip with my signature on it, when I signed in Macy's in 1944 or '45, for that console table, and I believe I bought something else at that time, too. It was shipped to my house.

The Court: What did you have, a D.A. account, or cash.

The Witness: No, I had to pay cash.

The Court: Why would your name be on a sales slip?

The Witness: Because I had to give him the money, and there was—I had to have some notation like a receipt, that I paid the money. I believe the salesman brought over one of these folding booklets, and I signed one of these folding booklets.

The Court: Was it delivered, or did you take it with you?

The Witness: It was delivered. It was too big for me to take with me.

Q. Do you know, Mr. Rosenberg, that we have asked Macy's to find that check and they can't find it?

Mr. E. H. Bloch: That is not so, your Honor. That is [fol. 1798] the statement I was going to make.

Mr. Saypol: I am responding to what Mr. Bloch said and what the witness has volunteered.

The Court: Mr. Bloch, please be seated. You will have your chance on redirect.

The Witness: Your Honor, I have requested my attorneys to find that receipt.

The Court: You said that before.

The Witness: And my attorneys told me that Macy's cannot find the receipt unless I gave them a number or copy of receipt that I had, because it is filed by number.

The Court: All right, go ahead.

The Witness: Now, I feel that if somebody looks through all the numbers through those years, they will find one for Julius Rosenberg, and it is worth finding if it is such an important issue.

Q. Now, Mr. Rosenberg, where did you keep that table in the house?

A. In the living room, sir.

Q. Which wall, the one near the kitchen and bedroom, or the opposite wall?

A. Well, the one that was near the kitchen.

Q. That would be the south wall, would it not?

A. I can't specify whether it is the south wall. It is the one near the kitchen.

[fol. 1799] Q. Well, you know the location of your apartment. When you come in, you face in, coming down a long hall?

A. That's right.

Q. Let's walk down the long hall toward you.

A. That's right.

Q. And then when one opens the door, the entrance to your apartment, 11G, is it?

A. G-11.

Q. One turns left?

A. That is correct.

Q. And the window faces towards the East River?

A. That's right.

Q. So that the entrance to the apartment is located——

Mr. Saypol: May this be marked?

(Marked Government's Exhibit 29 for identification.)

Q. The entrance to the apartment is located on the west of the apartment, the westerly end of the apartment?

A. That's right.

Q. Is that right? A. That's right.

Q. And still facing the entrance to the apartment, on the southerly side of the apartment, walking left, is the bathroom and the bedroom?

A. That's right.

Q. Is that right?

A. That's right.

Q. The bedroom is at the most southerly part of the apartment?

A. That's right; it would be the south wall.

Q. And to the north of that is the entrance to the living [fol. 1800] room; is that right?

A. Correct.

Q. And then continuing east in the living room, at the far end is the kitchen, also on the southerly end of the apartment. I will show you Government's Exhibit 29 for identification, and you follow it from there. That is a sketch of your apartment, isn't it, blueprint or layout of your apartment (showing to witness)?

A. That's right.

Q. Now then, will you mark with a pencil the place where the console table was kept?

Mr. E. H. Bloch: Do you want to offer that in evidence, Mr. Saypol? There is no objection.

The Court: He can do it after. There is apparently no objection to it, is there, Mr. Bloch?

Mr. Bloch: No, sir.

A. It was kept——

Q. In other words, you say it was kept just about the entrance of the kitchen?

A. That's right.

Q. Is that where it was always kept?

A. Except when we ate and had more people, we would bring it away from the wall so we could sit behind it.

Mr. Saypol: May this be received in evidence, now?

(Government's Exhibit 29 for identification received in evidence.)

[fol. 1801] Mr. Saypol: As Mr. Bloch has no objection, we will mark the various poles, north, east, west and south.

Mr. E. H. Bloch: I have no objection.

Q. Now, let me see, Mr. Rosenberg, this would be east, wouldn't it, where I put the letter "E"? The East River is over here (showing to witness)?

A. Over here (indicating).

Q. That's right, this is east here; the East River is here. I will mark that, too; is that right?

A. That is correct. This faces the court.

Q. That's right; we will say "court" here, too. Now, this is west here; is that right?

A. That's right.

Q. We will call this "south"—no——

A. That would be north.

Q. That would be north; that is right. You have a good sense of direction.

A. The only way I can tell is with my eyes on the right.

Q. This would be south here, and you say that this table was kept approximately to the southerly wall of the living room, near the entrance of the kitchen; is that right?

A. Yes. Now, let me explain something. From time to time, we shifted furniture around and we might have put [fol. 1802] it in different parts of the room. It might have been kept here once (indicating); I don't remember. We shifted—

Q. You mean, near the window, but it was always in the living room?

A. Always in the living room.

Q. When did you see it last in the living room?

A. When I was arrested, sir.

Q. When you were arrested?

A. That's right.

Q. Now, you bought this table in 1944 or 1945, during the war; is that right?

A. That is correct sir.

Q. Did you have any trouble finding any furniture at that time?

A. That was on the floor of Macy's. There was a big display, many little tables were on the floor.

Q. The place was full of little tables?

A. That's right.

Q. Don't you know, Mr. Rosenberg, that you couldn't buy a console table in Macy's, if they had it, in 1944 and 1945, for less than $85.?

A. I am sorry, sir. I bought that table for that amount. That was a display piece, Mr. Saypol, and I believe it was marked down.

Q. You mean the place was full of marked-down tables?

A. That is correct, sir.

Q. Did you ever have a Leica camera?

A. No, sir.

Q. Never did?

A. No, sir.

[fol. 1803] Q. Did you ever borrow one from anybody?

A. No, sir.

Q. Did you ever use one?

A. No.

Q. We had some talk about some watches here; how many watches did you have when the agents arrested you?

A. I don't recall the exact number, sir. There were several of them.

Q. About 10?

A. I don't think there were that many.

Q. Two?

A. No, there were more than two.

Q. There was one of your wife's; is that right?

A. That is correct.

Q. Where did you buy that?

A. I bought that watch in 1945, while I was working at Emerson Radio.

Q. From whom did you buy it?

A. I bought that watch from a fellow who goes around as a peddler and sells watches. He used to come around regularly when people were paid on Fridays and people would buy gifts, costume jewelry; he sold watches and things of that sort.

Q. Is that the only watch you ever bought for your wife?

A. That is correct, sir.

Q. What was the occasion for buying it; any special occasion?

A. Well, her birthday was—it was just a little while [fol. 1804] before her birthday and I figured I would want to give her a birthday present.

Q. How much did you pay for it?

A. I got a very good buy from that man on the watch. I believe it was somewhere around $30.

Q. Was anybody present when you bought it from him?

A. Well, there were other fellows who were buying watches.

Q. Did anybody else see you buying the watches from him?

A. Sure, people working at Emerson Radio used to buy that from those people.

Q. Who saw you buy the watch, anybody that you can name?

A. I can't remember anybody.

Q. How did you know it was a good buy?

A. It looked good, and the people at Emerson, who bought watches from this man, said, "The man gave you a very good buy."

Q. Is that the first time you ever bought a watch?

A. No, sir.

Q. Is that the first time you ever bought your wife a watch?

A. That is correct.

Q. What color was it, white or yellow?

A. I believe it was yellow, sir.

Q. Did you take it out first to show to your wife, to see if she liked it, before you bought it?

A. No, sir.

Q. Just the same day that you saw it, you bought it for [fol. 1805] her?

A. That is correct.

Q. Haven't you got a brother-in-law in the wholesale jewelry business?

A. That is correct.

Q. What is his name, Sam?

A. That's right.

Q. Didn't he sell watches wholesale?

A. Yes, that's right.

Q. You didn't think of buying it from him, did you?

A. You see, Mr. Saypol, I couldn't buy very many things from him. Every time I asked to buy something from him, he was always too busy.

Q. Is he another one that you always had heated arguments with?

A. No, sir.

Q. You told us that on a Saturday morning in 1945—you fixed it as April—you took a ride to Washington to see a man by the name of Dickstein, to straighten you out in connection with your labor problem?

A. I went to see my Congressman. It was somewhere between—after the time that I was dismissed from Government service.

Q. Well, that was around March or April of 1945, was it not?

A. My lawyer had some papers that I had sent to my union attorney, which would specify the time that I had gone to Washington.

By the Court:

Q. Well, I believe you testified Friday——

[fol. 1806] A. It was on a Saturday morning.

Q. It was April, I think you said?

A. Well, I have the records when I wrote my lawyer and recommended that about two weeks I ought to go down and see my Congressman.

By Mr. Saypol:

Q. In any event, that is what fixed the incident in your mind, as to time?

A. That is correct, sir.

Q. You took this night train down to Washington; you got there before 9 o'clock?

A. That's right, sir.

Q. You found out that Congressman Dickstein wasn't around and his office closed?

A. I called at 9.00 and he wasn't around.

Q. Then you started thumbing through the telephone book and that is when you made the visit to this man, Elitcher, whom you had seen casually in City College in 1939?

A. No, that is not so, Mr. Saypol.

Mr. E. H. Bloch: Wait a second before you answer.

The Court: Wait a minute. Let your lawyer say something.

Mr. E. H. Bloch: If the Court please, I object to the question because it is again premised under a state of facts not in the record. In fact, it is contrary to the testimony up to now.

[fol. 1807] The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: May I know in what respect it is contrary? I don't like to be inaccurate.

Mr. E. H. Bloch: Because I believe that the testimony is that the first time he came to see Elitcher was either in the latter part of '43 or '44—Elitcher places it in June '44. I believe you are now referring to the second trip, Mr. Saypol. Elitcher claims it was in September '45, and I think this witness claims that it was sometime in April 1945. I don't know whether you mean the first or second trip, you see.

Mr. Saypol: Well, if you will allow me to continue with my question, you will see what I mean.

The Court: Go ahead.

Q. Here is this man Elitcher, that you hardly knew up in City College in 1939, whom you had seen in 1940 for a minute—you said for a few seconds—at a swimming pool?

A. Well, I can't specify the exact length of seconds.

The Court: We don't hear you.

The Witness: I said, I can't specify the exact length of seconds in the minute. It was very casual.

Q. All right, we will start again. We will give you the benefit of the doubt.

[fol. 1808] Here was a man whom you had known casually in City College in 1939 and whom you had seen for all of a full minute at a swimming pool in 1940, when you were with Sobell, and whom you suddenly decided to visit because you were lonesome, on an evening in 1944; and did you then decide in April or March of 1945, on a Saturday morning, to look this fellow up again because you were lonesome?

Mr. E. H. Bloch: If the Court please, I object to the question upon the ground it is argumentative.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. No, it had nothing to do with being lonesome. I knew he had lived in Washington, and I was in Washington, and I had some time before I went over to the union headquarters to try to find a Mr. Stein and another person I wanted to see there.

By the Court:

Q. Did you say it had nothing to do with being lonesome? I thought you told—

A. No, it happened that second time I was in Washington on a mission for myself.

Q. Didn't you tell us Friday here that you were lonesome and that you began to think of other friends of yours from City College?

A. That was the second time I am talking about, Mr.— [fol. 1809] your Honor. Mr. Saypol is talking about the time I went down to see my Congressman.

Q. I see. The second time when you did call Elitcher, you were lonesome at that time and you called him because you wanted somebody to talk to?

A. No, it was the first time.

Q. Oh, the first time you were lonesome?

A. That's right.

The Court: I see.

By Mr. Saypol:

Q. Well now, the first time that you went to see Elitcher, you told us that you thumbed through the telephone book and you looked for Sobell and you didn't find that, so then you looked for Elitcher; is that right?

A. That's right.

Q. And that was in the summer of 1944?

A. That is correct.

Q. Now, getting back to Elitcher for a minute, had you been in touch with Elitcher between the time you saw him in 1944 and this March or April of '45 when you visited him on Saturday morning?

A. No, I had not been in touch with him.

Q. Had you written to him?

A. No, I didn't.

Q. Had he written to you?

A. No, he didn't.

[fol. 1809a] Q. Between 1940 and this incident in 1945, when you looked for Sobell's name in the Washington telephone book, had you been in touch with him?

A. Between 1940 and '45?

Q. Yes.

A. I might have seen Sobell between that period, I don't know.

Q. How often?

A. Actually, I don't recall if I ever saw him at all, but I might have seen him.

[fol. 1810] Q. Did you write to him?

A. No, I didn't.

Q. Did he write to you?

A. No, he didn't.

Q. What was it that inspired you to look for Sobell when you were in Washington that Saturday morning at nine o'clock in 1945?

Mr. E. H. Bloch: Now, if the Court pleases, again I think this ought to be clarified. If Mr. Saypol is directing the witness's attention to the first meeting, it ought to be explained. If it is the second meeting, we are talking about something else. I think, Mr. Saypol, with all due respect——

The Court: Well, aren't the dates clear enough?

Mr. E. H. Bloch: No. You see, Mr. Saypol is talking about the second visit as though it was the first visit, and I say, Mr. Saypol, with all due respect, you are a little confused about these visits.

Mr. Saypol: I wasn't there, and I am trying to find out whether your client was there.

Mr. E. H. Bloch: Well, neither was I, but I have to go by the testimony.

The Court: Well, when counsel get all through with their little tete-a-tete, I will rule.

Mr. Saypol: I am sorry.

Mr. E. H. Bloch: I apologize.

[fol. 1811] The Court: Now, will you get the point cleared up, Mr. Saypol.

Q. You say you hadn't corresponded with Sobell, there had been no exchange of correspondence between you, between 1940, the swimming pool, and 1944, when you visited Elitcher at night?

A. That is correct.

Q. You are not certain whether you saw him or not in the intervening four years?

A. That is correct.

Q. At least you have no recollection of having just seen him?

A. That is right.

Q. But you have testified, have you not, preceding your visit to Elitcher in Washington in 1944, you looked in the telephone book for Sobell's name and for Elitcher's name, is that right?

A. That's correct.

Q. You testified that you did not find Sobell's name but you did find Elitcher's name?

A. That is correct.

Q. Didn't you know that Sobell was working for General Electric at that time in Ithaca, New York?

A. I didn't know.

Mr. E. H. Bloch: You mean Schenectady.

Mr. Saypol: I said Ithaca.

Mr. E. H. Bloch: Oh, I am sorry.

Q. Did you know that he was working in Schenectady? Your lawyer has corrected me.

A. No, I didn't know.

[fol. 1812] Q. You don't know either way?

A. You see, I don't recall whether I knew it or not. I knew subsequent—subsequently that he worked for General Electric.

Q. Now, Mr. Rosenberg, do you remember having testified about an incident with Ruth Greenglass in February, 1945, when she asked you to come to her apartment?

A. Yes.

Q. Will you tell me——

Mr. E. H. Bloch: Will you keep your voice up? We cannot hear it.

The Witness: I am sorry.

Mr. Phillips: Excuse me—how about the usual morning recess?

The Court: We started about eleven o'clock, we will have it at twelve o'clock, a few minutes before.

Is there something about this subject that suggest- a recess to you?

Mr. Phillips: The clock showed me a recess. I turned around and looked at it.

Q. Tell us just what happened and when? Describe it for us again, will you?

A. Well, I don't recall the exact date that I went to——

Q. Or the exact month?

A. No, sir. It was the time——

Q. Do you recall the exact year?

[fol. 1813] A. Yes, I will tell you when it was.

Q. All right, give us that; what year?

A. It was the time between——

Q. First give us the year, won't you?

A. 1945.

Q. 1945; go ahead.

A. After David Greenglass left for his camp.

Q. When did he leave?

A. I believe it was some time in January—although it may have been in January, it may have been the beginning of February, I don't recall exactly when.

The Court: About how long after?

The Witness: I cannot specify. It might have been a week, it might have been two weeks, sir.

Q. Didn't you tell us on your direct examination the reason you remember it is, it was about the time you were suspended from your Army job?

A. I did not say that, sir.

Q. What did you say?

A. I said I remembered it when I heard the witness, Dorothy Printz, on the stand. I recall the incident but I didn't recall the exact time of the incident.

Q. You mean you hadn't recalled that incident before?

A. No, I hadn't recalled that incident before.

Q. You only recalled it here in the courtroom?

A. That's right, sir.

[fol. 1814] Q. Go ahead. Now, tell us when it was and tell us what happened.

A. Well, at that time I entered the house and Ruth Greenglass called me aside to tell the kid to go into the bathroom—that was her sister Dottie—and I did that and she said something to the effect that she is worried about the fact that David, her husband, wants to make some money and take some things from the Army.

I told her to warn David not to do anything of the sort,

he might get himself into trouble, and I mentioned to her at that time something about the accounts I had read about G. I.'s taking things and getting themselves involved in a mess—and that was the substance of the conversation.

Q. Did you say that at that time Ruth had spoken to David at Albuquerque on the telephone?

A. No, I didn't say anything of the sort.

Q. Who did you tell that to at that time?

A. I mentioned to my wife when I came home that her brother has some crazy notions but I told Ruthie to knock it out of his head—something to that effect.

Q. What did your wife say?

A. She says it was a good thing that I told Ruthie to warn him.

Q. Did you tell it to anybody else in the famly?

A. No, sir.

[fol. 1815] Q. Did that leave a strong impression with you at the time?

A. No, it didn't.

Q. There came a time when—I will withdraw that.

Did you know at the time that was told to you that he was working on a secret project?

A. That's correct.

Q. In other words, in February, at least, the end of January, 1945, or the beginning of February, or some time in February, you knew that David Greenglass was working on a secret project?

A. That's correct.

Q. You knew something about secrecy in connection with Army projects, didn't you?

A. That's correct.

Q. You were working on similar things yourself?

A. Right.

Q. You knew what "classification" was and you knew what the penalties were for the violation of the secrecy precautions?

A. That's correct, sir.

Q. Now knowing that and knowing that there was involved your wife's brother in respect to making money by stealing things from the Army, you told nobody else but your wife?

A. That's correct.

Q. Did you make any effort aside from the advice that you gave to your sister-in-law to prevent any indiscretions of this kind on the part of David Greenglass?

A. No, I felt that she would carry the message to him, [fol. 1816] and by nodding her head when I made that statement she seemed to agree.

Q. You knew that he was working in a machine shop at this secret project? Is that right?

A. I knew he was working as a machinist.

Q. And did it occur to you that he would probably try to steal gasoline—is that what you said?

A. Parts, that's what occurred to me.

The Court: What did you say?

The Witness: Parts.

Q. What kind of parts?

A. Tools.

The Court: Wait a minute. You said—this is your testimony, page 1615 of the record: "I have read some accounts in the newspapers about some G. I.'s doing foolish things and taking parts and gasoline from the Army."

The Witness: That's right.

The Court: Was it gasoline that occurred to you also?

The Witness: That's right.

Q. Now there came a time when David Greenglass was discharged from the Army in 1946, wasn't there?

A. Yes.

The Court: Wait. I want to ask you something. You mean between that incident and the discharge of David Greenglass from the Army you never had occasion to discuss [fol. 1817] this desire on the part of David Greenglass to take things from the Army?

The Witness: No, because it didn't enter my mind: it was just like a passing incident.

The Court: The fact that a brother-in-law of yours was about to get himself into some kind of difficulty by taking things from the Army, that didn't belong to him did not enter your mind?

The Witness: No, sir, not at that time.

Q. A moment ago you said that you had no knowledge at

the time that Ruth Greenglass had spoken to her husband on the telephone in Albuquerque, is that right?

A. That's right.

Q. Do you remember when the agents talked with you on June 16th?

A. Yes.

Q. Did you tell them then—did you tell the agents that at that time you had spoken to David on the telephone in Albuquerque?

A. Did I tell them? I don't recall telling them anything of the sort.

[fol. 1818] Q. Now I asked you the direct question whether you told the agents in the course of the interview on June 16, 1950, that in February, 1945, Ruth Greenglass had telephoned, had spoken on the phone to David in Albuquerque and about a week or so after that she went out to New Mexico to visit David.

A. I never told them that. They may have told me that.

The Court: All right, we will at this point take our recess.

Q. One question: Who was doing the questioning? You or the agents? Were they asking you questions or were you asking them questions?

A. They were asking me questions, Mr. Saypol, but they were also trying to direct my attention to an answer they might want.

The Court: All right, we will take the recess.

(Short recess.)

Q. Mr. Rosenberg, did you know that Mrs. Greenglass perhaps had telephoned to her husband in Albuquerque in November of 1944?

A. I didn't know, sir.

Q. Did the agents tell you that, too?

A. No, sir, I don't recall.

Q. But you say that they told you——

A. I didn't say they told me; they may have told me, but I know I didn't tell them.

Q. Well now, you say on June 16, 1950, the agents [fol. 1819] may have told you that in February, 1945, that

Mrs. Greenglass had telephoned to her husband in Albuquerque?

A. I don't recall, sir.

Q. You say now here that you didn't know it and you never told it to them at any time?

A. Not that I can remember, sir.

Q. That interview took place about eight or nine months ago, didn't it?

A. It took place in June, 1950.

Q. That interview lasted from nine o'clock in the morning approximately until two or three in the afternoon?

A. That is correct, sir.

Q. And you cannot remember whether you told the agents or they told you about the fact of a telephone call between Mrs. Greenglass here in New York and her husband in Albuquerque in 1944 or 1945?

A. That is right, sir, I cannot remember.

Q. Did you tell the agents on June 16, 1950, in the course of the interview about this conversation with Mrs. Greenglass in 1945 in which she told you she was very much worried because David was going to start stealing gasoline from the Army?

A. Mr. Saypol, she told me——

Mr. Saypol: May this witness be directed to answer?

The Witness: Yes, I am answering. She told me in that [fol. 1820] conversation he had an idea and I didn't know if he did or he didn't do anything at that time. He only thought about the idea.

Q. In other words, you distinguish between the idea of stealing and the fact of stealing?

A. That is correct.

Q. Do you say the idea of stealing is right or wrong?

A. It is wrong.

Q. And was it because she told you that he had the idea as distinguished from doing it that you did nothing more than tell it to your wife, his sister?

A. That is right.

Q. At least you knew from that time that he had ideas of theft in his mind, did you not?

A. Correct.

Q. Then when he came out of the Army in 1946, did you go into business with him and stay in business with him for three years?

A. That is right.

Q. In other words, you, knowing that at one time you had been told this man had larcenous ideas, nevertheless you went into business with him?

A. Well, Mr. Saypol, David Greenglass talked about a lot of things. He used to boast about things. I don't know if he really did a thing like that, or just talked about it.

By the Court:

Q. Well, didn't you question him before you went into [fol. 1821] business with him a little more thoroughly and before you put your money into that business to find out whether or not he had more than ideas about these things?

A. It was only mentioned to me once by his wife. I had no proof that he did anything like that. I actually didn't know whether he would carry out his thought into action.

Q. Of course, you remember the incident here in 1951. This incident that occurred in January or February of 1945. So you must have thought of it.

A. Well, I just thought of it now, that is right. It flashed through my mind. Also the time he spoke to me in 1950 on two occasions when he was very disturbed.

Q. Well now, then, of course these incidents must have been implanted into your mind to such an extent that you remember them?

A. Yes.

Q. Several years after?

A. Correct.

Q. And the question I put to you is whether or not before you invested your money in a business with this man you did anything by way of questioning him more thoroughly concerning his ideas of stealing things from the Army?

A. No, I didn't question him at that time because I didn't know if he actually did them.

Q. I am talking about his ideas of stealing, not whether [fol. 1822] he actually had stolen anything, but merely thinking about stealing.

A. No, I didn't question him at that time.

By Mr. Saypol:

Q. Did you tell the agents about that when they interviewed you on June 16th?

A. They didn't ask me about that.

Q. Did you think you should have volunteered it to them?

A. Well, when a member of the family is in trouble, Mr. Saypol, you are not interested in sinking him.

Q. You knew at that time when you had the interview on June 16th that he had been arrested, didn't you?

A. No, I didn't know that. I knew he had been picked up. I asked the agents what had happened to him; they wouldn't tell me.

Q. Did you have any idea what he had been picked up for?

A. No, not until after I read the newspapers.

By the Court:

Q. Were you trying to protect him at that time?

A. Well, I didn't know what he was accused of, your Honor. I had a suspicion he was accused of stealing some uranium at that time.

Q. Well, in connection with that, were you interested in protecting him?

A. I wasn't interested in doing him any harm at that particular point.

[fol. 1823] Q. Were you interested in protecting him, I asked you.

A. Well, I felt that when a man is in trouble, the one thing his family should do is stick by the man, regardless of the trouble he is in.

Q. You are answering the question. You were interested in protecting him?

A. Not in protecting that act itself, but protecting the individual.

Q. To the point where you would not reveal something which you felt——

A. Well, I wasn't asked a particular thing like that and there was nothing for me to reveal. I wasn't aware of the trouble he was in.

Q. You said you believed it had something to do with stealing uranium.

A. I had an idea.

Q. Very well. Now, this incident that occurred in January or February, 1945, that is, taking things from the Army, would be related to such an incident, wouldn't it?

A. That is correct.

Q. The question, I believe, asked by Mr. Saypol was whether or not you revealed that to them when you were questioned?

A. They didn't ask me that, your Honor.

By Mr. Saypol:

Q. Had you told the agents when they called upon you that morning that you wanted to cooperate with them?

A. They told me they wanted to ask me some questions, [fol. 1824] and I said I would answer the questions.

Q. Did you tell the agents, did you tell them that you wanted to cooperate with them?

A. At that particular time, yes, sir.

Q. Did you tell them that more than once in the course of the interview?

A. A couple of times before they tried to involve me.

Q. You testified on direct examination, did you not, that when the agents called at your home that morning, you hadn't had your breakfast and you were not fully dressed, is that so?

A. Correct.

Q. Is it a fact that you testified that when the agents suggested that you come to their office and confer with them, that you first talked to your wife? Is that right?

A. When they came into the house, I went into the—a little while after they were there, a few moments after they entered the apartment, I went into the bathroom and finished my shaving and I talked to my wife there and she told me, "If you can help Davey, if he is in some serious trouble that he is in, you ought to do it. You ought to go down and see if you can help him."

Q. You knew at that time of the disclosure concerning the theft of atomic bomb secrets from Los Alamos, didn't you?

A. Well, I read about the Harry Gold case.

[fol. 1825] Q. You read about the Klaus Fuchs case, too?

A. That is correct.

Q. Didn't you?

A. That is correct.

Q. You know concerning the fact that David Greenglass had been questioned in February by an agent of the FBI regarding the theft of uranium, didn't you?

A. That is correct.

Q. Where did you find that out?

A. David told me.

Q. When?

A. Told me at the shop.

Q. When?

A. I don't exactly remember the date, but I know he told me.

Q. You mean sometime subsequent, February?

A. That is right.

Q. So that at least after that you knew first that your sister-in-law had told you of David's expressed inclination to steal something from the Army in February, 1944, and you knew of the fact that inquiry by the FBI of David Greenglass regarding the theft of uranium?

A. That is correct.

Mr. E. H. Bloch: I think Mr. Saypol meant February, 1945.

Q. February, 1945. And you knew of the Klaus Fuchs and Harry Gold incidents?

A. But I didn't link the two up.

[fol. 1825a] Q. I say you knew of them?

A. That is right.

Q. Those four things, correct?

A. Correct.

Q. Greenglass wants to steal in February, 1944; the FBI asks Greenglass in February, 1945; the FBI questions Greenglass in February, 1950, about the theft of uranium; June 16, 1950, you are questioned; Greenglass was in custody; Klaus Fuchs has been apprehended and Harry Gold you knew about in relation to the atomic bomb? Is that correct?

A. That is correct.

[fol. 1826] Q. You knew then, too, didn't you, of the relation of uranium to the atomic bomb on June 16, 1950?

A. That is right.

Q. And you still say that you had no suspicion, you had no idea when the agents questioned you, regarding the nature of the arrest of David Greenglass?

A. That's right, because David Greenglass himself told me that he didn't steal the uranium after that interview, for I believed him.

Q. You were very much his adherent; you wanted to protect him?

A. No, I was not very much his adherent.

Q. Well, let us look at these watches for a moment, Mr. Rosenberg. We will come back. You said before you did not know how many watches they took. Are these all your watches, that is, yours or your wife's (handing)?

A. That's right.

Q. Are these the watches that were taken from you or from your home on June 16th—rather July 17th, 1950?

A. That is right.

Q. Now let me see; there is one that is a yellow metal men's watch, Clebar 17-jewel——

Mr. Saypol: May that be marked for identification, or perhaps in evidence? Counsel will not object, I take it.

The Court: Why mark it in evidence?

[fol. 1827] Mr. Saypol: All right.

The Court: You can mark it for identification.

Mr. Saypol: All right, mark it for identification.

The Clerk: Government's Exhibit 30 for identification.

The Court: I think if you are going to mark anything, mark it A, B and C for identification.

(Marked Government's Exhibit 30-A for identification.)

Q. Now there is another one marked Croton Automatic. Is that right, a white metal case?

A. No, Aquamatic.

Mr. Saypol: Yes, the defendant is right, it is Aquamatic, rather than Automatic.

May this be marked for identification, too.

(Marked Government's Exhibit 30-B for identification.)

Q. Then there is apparently an ancient watch that apparently you must have gotten from a relative, Mr. Rosenberg?

A. I got two from a relative, my father's watch——

Mr. E. H. Bloch: Will you speak up, please.

Q. A Waltham watch that you got from your father, in a hunting case, a black case with a yellow chain.

Mr. Saypol: May that be marked for identification.

(Marked Government's Exhibit 30-C for identification.)

Q. Did you have any other men's watches?

[fol. 1828] A. At the house?

Q. Any place.

A. Yes, sir, I did.

Q. What other watches—I withdraw that. Did you have any other watches at the house?

A. Yes, there were other watches at the house.

Q. Any others taken by the FBI?

A. I don't know whether they took them or left them. There were a couple of cheap pocket watches that were broken. There was another wrist watch that was broken.

Q. Did you show those watches to the agents or did they show them to you?

A. I believe they did.

Q. Did you talk to them or did they talk to you about any other watches at any other time?

A. No, they did not talk about any other watches.

Q. Then there was no discussion between them and there was nothing shown to you, and there was nothing taken, isn't that the fact?

A. They looked through the drawers of the bureau——

Q. Anything like the——

Mr. E. H. Bloch: I submit that the witness be permitted to answer.

The Court: Wait, one at a time. Finish your answer.

A. (Continuing) I said they looked through the bureau drawers where I kept the old watches that did not work, [fol. 1829] and they looked through all those drawers, and that is where I kept the watches, and that is where they found these watches except for the watch that I wore on my hand.

Q. Do you suggest that perhaps they took watches that haven't been produced here?

A. No, I do not suggest that, sir.

Q. Now you say you had another watch at some other time?

A. That is right, sir.

Q. What kind of watch was that?

A. I remember the name——

Q. Wasn't that name Omega, in a white metal case?

A. I believe that is the watch.

Q. Is that the one you got from some Russian representative?

A. That is the one I got from my father.

Q. An Omega?

A. That is right.

Q. How long ago?

A. How long ago? It was before my father died.

Q. When did he die?

A. In 1946.

Q. What kind of a watch was it?

A. It was a wrist watch.

Q. Describe it.

A. It looked something like that Croton one.

Q. Describe the circumstances under which he gave it to you?

A. He gave it to me as a present.

[fol. 1830] Q. What was the occasion?

A. What was the occasion? It may have been my birthday in May of—in May of 1945 or 1946. I don't remember exactly which year.

Q. Don't you remember whether it was a birthday present or not?

A. I believe it was a birthday present.

Q. Aren't you sure whether it was a birthday present?

A. Yes, it was.

Q. Now are you sure?

A. Now I am positive it was.

By the Court:

Q. How old were you at the time?

A. Well, it would be when I was probably 28—28 or 27, one of the two years.

Q. What did your father give you the year before for your birthday?

A. He used to give me shirts, ties.

Q. What did he give you the year before that?

A. Clothing—clothing articles usually.

Q. This year he gave you watch?

A. That's correct, sir. He was doing a little better in—in his working, at his trade.

Q. What was his trade?

A. He was a clothing operator and that year he was doing pretty well, I remember. He also gave me - bond one time.

By Mr. Saypol:

Q. What kind of a bond?

A. War Savings Bond.

Q. How much.

A. I don't remember because my mother had those [fol. 1831] bonds.

Q. Was it a thousand-dollar bond?

A. No.

Q. Was it a $25. bond?

A. It was either a $25. or $50. bond. My mother has those bonds.

The Court: What was the value of this Omega watch.

The Witness: I have no idea, sir.

Q. Where did he buy it, sir?

A. I would say he either bought it in 1945 or 1946.

Q. Where did he buy it?

A. Where? I don't know, sir.

Q. Possibly he bought it from your brother-in-law, Sam?

A. No, he did not.

The Court: Was it registered in your name?

The Witness: I wouldn't know if it was registered in my name.

The Court: Well, didn't he give you the bond?

The Witness: He is talking about the watch, sir, and you are talking about a bond.

The Court: How about the bond? Was that registered in your name?

The Witness: That was registered in my name.

Q. Where is it today?

A. I believe I turned it over to my mother, that war savings bond.

Q. Let us come back to this Omega watch. You say [fol. 1832] your father used to give you clothing?

A. That is right.

Q. Did he ever buy you a suit?

A. He bought me suits.

Q. How recently?

A. Well, when my father died, I got all his suits and all his wardrobe.

Q. He couldn't obviously buy those for you?

A. No.

Q. Did he ever buy a suit for you as a birthday present?

A. Not for a birthday present; on an occasion.

Q. You mean for your bar mitzvah, perhaps?

A. No, when I needed a suit.

Q. How much did he pay for the watch, do you know?

A. I have no idea.

Q. Don't you know that an Omega watch costs more than $100.

A. I have no idea, sir.

Q. Did he ever buy you presents for $100. on your birthday?

A. No, sir.

The Court: Where is that watch today?

The Witness: Well, on a vacation trip that I was taking with my wife and child, the band broke and I put it in my vest pocket, and the baby, who was sitting on my lap, picked it up and dropped it out the train. When I got off the train I remember I reported to the New York Central Lost and Found Division, the loss of this watch. It was after my father's death. I told them it was very important to me because it was something that my father had given to me. [fol. 1833] I wrote out a slip telling them what the watch

was like and what it meant to me, and I never heard from them again on it.

Q. What kind of a trip? Where were you coming from?

A. I was coming from the country.

Q. Where is the country, in what State, City or County?

A. Well, my wife would recall the——

Q. It was in the United States?

A. It was in the United States.

Q. Was it in New York State?

A. It was across the Hudson on the other side; I believe Plat—something to do with "Plat."

Q. You mean Plattsburgh, New York?

A. No, Platkill, I think it was.

Q. Platkill. You mean around the West Shore Division of the New York Central Line?

A. That is correct. I know we took a ferry across.

Q. In what year did this occur?

A. I cannot remember the exact year. My wife would be able to remember that.

Q. Well, it must have been after 1945?

A. Oh, sure, it was after my father's death in 1946.

Q. Now then, was it 1947, 1948, 1949 or 1950?

A. It was either 1947 or 1948, I would say.

Q. So that the summer of 1947 or 1948, you reported [fol. 1834] to the New York Central Railroad?

A. The loss of the——

Q. The loss of a watch on the West Shore train, and you said in your report that that was a watch which had a great deal of sentimental value because it had been given to you by your father for a birthday present?

A. That is correct.

Q. And as long as you described the watch——

A. That is right.

Q. How did you describe it? I put the name of the watch down and told them the name of it.

Q. What was the name of it?

A. Omega.

Q. What else did you say about the watch so that they would know it was yours? Did you tell them how many jewels there was on the watch?

A. That I don't know because I don't remember.

Q. Do you know how many jewels it had?

A. No.

Q. Did you tell them whether it had a sweep hand or a second hand?

A. I don't recall

Q. Did it have a sweep second hand?

A. It might have or it might not have; I don't recall, sir.

Q. Do any of these watches have sweep second hands?

A. I didn't notice if any of them have it.

Q. Here is Government's Exhibit 30-A for identification —that is the Clebar watch. Hasn't that got a sweep second hand (handing)?

[fol. 1835] A. That is right, it does.

Q. Did you ever notice that before in that watch?

A. I didn't notice it.

Q. How long have you had that watch?

A. I believe this is the watch that I bought from my father on Father's Day, before he died.

Q. You mean first your father gave you a present for your birthday and then you bought another watch from him?

A. No, I bought this watch for him.

Q. I beg your pardon.

A. As a Father's day gift.

Q. I see.

A. And this watch, if I am not mistaken, was a watch I bought from Ethel's brother.

Q. You mean from Sam?

A. That is right.

Q. Do you know whether your father bought the Omega watch that he gave you from Sam?

A. I have no idea, sir, where he bought it.

By the Court:

Q. At the time you got that Omega watch you had several watches, didn't you?

A. No, sir. At that time I only had—I had lost my watch. I had had a wrist watch, a Waltham watch which I got for my bar mitzvah, and that year I remember I lost it, and that

was the occasion why on my birthday my father gave me that watch.

Q. Where did you lose that one?

A. I don't remember where I lost it. It just was lost. [fol. 1836] Either the hand broke and I lost it in using it.

Q. Then this Omega watch would be the second wrist watch that you lost?

A. That is right, sir.

By Mr. Saypol:

Q. Now look at Government's Exhibit 30-B for identification; that is the Croton. How long have you had that (handing)?

A. I bought this watch in 1950.

Q. You know where you bought that watch, don't you, 30-B for identification?

A. That is right.

Q. Where?

A. I bought it on Delancey Street near Clinton Street, a jewelry store.

Q. Now this watch of your wife's——

Mr. Saypol: May this be marked, please.

(Marked Government's Exhibit 30-D for identification.)

Q. You have seen that watch before, 30-D?

A. Yes, sir.

Q. That is the one you bought from a peddler at Emerson's, is that right?

A. Yes, that is right.

Q. Now do we have it then that sometime in the summer of 1947 or 1948, one of those two years, and no others——

A. That is right.

Q. ——you were riding on a train of the West Shore, New York Central Division, and you lost an Omega watch and reported it?

A. That is right. My wife can testify the time we were on vacation. She remembers those things better than [fol. 1837] I do.

Q. In the course of your direct testimony, in response to questions the Judge asked you, you said that you are

not an expert on those things, and you were referring to politics, Russian politics, is that right?

A. That is correct.

Mr. E. H. Bloch: If the Court pleases, I object to the form of the question "Russian politics."

The Court: He says "Yes, sir," he was referring to it.

Mr. E. H. Bloch: Well, I mean the witness can very easily be confused. I submit that we were talking about American politics, too—politics.

The Court: Mr. Saypol was directing his attention to Russian politics.

Mr. E. H. Bloch: All right.

Q. Now let us read right from the record so we won't have any more dispute. Mr. Bloch questioned you——

Mr. Saypol: At page 1600, Mr. Bloch.

Mr. E. H. Bloch: Thank you.

Q. ——and you answered as follows, after saying that you would fight for this country if it was engaged in a war with any other country—by the way, did you ever fight for this country? Were you ever in the Army?

A. No, sir.

[fol. 1837a] Q. What was your activity during the war?

A. The Signal Corps of the United States Army deferred me.

[fol. 1838] Q. Engaged in——

A. Engineering work.

Q. ——engineering signal work, highly important secret projects; is that right?

A. That is correct.

Q. On the basis of your work, you secured deferments throughout the war?

A. The Government asked for deferments for me.

Q. You asked, too, did you not?

A. No, sir; the Government asked for my deferment.

Q. Didn't you join in any applications, 42-A, for deferment?

A. Well, I was told to fill the application out

Q. So you did join in them?

A. Naturally.

Q. Now, Mr. Bloch asked you the question and this was your answer:

"Yes, I will, and in discussing the merits of other forms of Governments"—now this is you talking—"I discussed that with my friends on the basis of the performance of what they accomplished, and I felt that the Soviet Government has improved a lot of the underdog there, has made a lot of progress in eliminating illiteracy, has done a lot of reconstruction work and built up a lot of resources, and at the same time I felt that they contributed a major share in destroying the Hitler beast."

Then the Court asked this question——

[fol. 1839] Mr. E. H. Bloch: Would you finish, please?

Q. (Continuing) "The Hitler beast who killed six million of my co-religionists, and I feel emotional about that thing."

Then later on the Court asked you this question:

"Did you approve communistic system of Russia over the capitalistic system in this country"?

And you answered:

"I am not an expert on those things, your Honor, and I did not make any such direct statement."

Do you remember having testified that way?

A. That's right.

Q. Well now, you had said a little while before that you felt that "the Soviet government has improved a lot of the underdog there"; what did you mean by that?

A. What I read in newspapers.

Q. And what did you read about the improvement of the lot of the underdog in Soviet Russia, as you read it in the newspapers?

A. Well, that the worker there, as living standards were increased, his housing conditions were better than at times he lived under the Czar. That is what I meant by increasing the lot of the "underdog."

Q. What newspapers did you read that in?

A. Various newspapers.

Q. You mean, the Daily Worker?

[fol. 1840] A. On occasion; the New York Times.

Q. Any others?
A. Yes.
Q. What others?
A. The Herald Tribune, The World Telegram.
Q. The Wall Street Journal, perhaps?
A. No, I don't read the Wall Street Journal.
Q. "Has made a lot of progress in eliminating illiteracy"; what did you know about that?
A. They built schools.
Q. Where?
A. From what I read.
Q. Where were the schools built?
A. In the Russian cities.
Q. What cities?
A. I don't know, sir.
Q. Where did you read that, same newspapers?
A. Newspapers.
Q. "Has done a lot of reconstruction work"; what did you know about that?
A. Well, there are a lot of reporters that go to Russia and report how the cities have been rebuilt, that were destroyed by the Nazis.
Q. What cities, for instance?
A. Stalingrad, Moscow.
Q. What type of reconstruction had been done?
A. I wouldn't know the details, sir. That is what I read the newspaper reports on.
Q. "Had built up a lot of resources"; tell me about the [fol. 1841] resources, won't you, please? What kind were they? Where were they? What they are? What were they intended for?
A. I wouldn't know everything about it, but I knew they built some large dams. That is what I consider "resources."
Q. Dams you consider resources?
A. That's right; hydroelectric stations. That is a dam.
Q. Did you read anything about the request of Russia for the atomic bomb? Would that be perhaps a resource that you had in mind?
A. No, I was talking about a previous period.
Q. What other resources?
A. That is about all I referred to.

Q. Aside from the dam?
A. That is what I referred to as the resources.
Q. No wheat?
A. What is that?
Q. Wheat, grains?
A. I know Russia is a wheat producer. I read it in the newspapers.
Q. The only resources you can think are dams?
A. No, factories.
Q. Where would the dams be stored?
A. I don't understand your question, Mr. Saypol.
Q. Well, I don't understand you, frankly.

Mr. E. H. Bloch: If the Court please, I object to this colloquy between counsel and witness.
[fol. 1842] The Court: Now, I am going to say I don't understand you. You just be quiet. Let's have none of this colloquy now.

Q. Isn't it a fact that you read the Daily Worker regularly?
A. No, sir; I didn't read it regularly.
Q. Where did you buy it?
A. Newsstands.
Q. Where?
A. Various newsstands.
Q. Didn't you get it regularly at a newsstand at Madison and Rutgers Street?
A. No, sir; I didn't get it regularly there. I bought it at lots of newsstands.
Q. Do you know where the newsstand is that I am referring to?
A. You said at Madison and Rutgers Street.
Q. Isn't that where you used to get the Daily Worker every day?
A. No, sir; I never got the Daily Worker every day.
Q. Were there some occasions that your wife got it, when you didn't get it?
A. There are occasions when my wife got the Daily Worker.
Q. Is it fair to say that you or your wife got it every day?
A. No, sir; that is not fair to say that.

Q. What is the fact?
A. On occasions we would read the Daily Worker.

[fol. 1843] By the Court:

Q. Would you say your only source of information for the statements which Mr. Saypol read to you was from newspapers?
A. That's right, sir.
Q. Now from any direct contact with anybody or what anybody ever said to you?
A. Only from newspapers, sir; and the newspapers I am referring to are reports from the New York Times and Herald-Tribune.
Q. You mentioned the papers; you mentioned them all?
A. That's right.

Mr. Saypol: Is your Honor finished?
The Court: Yes.

By Mr. Saypol:

Q. Do you remember the occasion in 1950 when Dave Greenglass saw you and said he wanted $2000. or a medical certificate?
A. He didn't say $2000. or a medical certificate. He asked for——
Q. What did he say?
A. Well, the occasion you are referring to, Mr. Saypol, happened sometime in the middle of May, I believe, in 1950. He asked me to give him a couple of thousand dollars, and when I told him I couldn't get the money for him, he asked me if I could possibly get my doctor to give him a vaccination certificate.

Q. You mean he was willing to settle for a medical [fol. 1844] certificate if you wouldn't give him the $2000.?
A. No, sir; he wouldn't settle for anything. He wanted the money and that.

Q. Well, I thought you said a moment ago, and I think your direct testimony was, that at first he wanted $2000., and when you told him you couldn't get that, he then said he wanted to get a medical certificate?

A. No, he said, "At least if you couldn't do the other thing for me, if at that time, at the moment, you couldn't raise the money for me."

Q. Then you reported that back to your wife?

A. That's right.

Q. What did she say?

A. She was terribly disturbed over it.

Q. How did she show her terrible disturbance? What did she do or say?

A. She said something to the effect, "Was Ruthie nagging Davey for money again"? And I told her, "No, it doesn't look like that is the thing," but then she asked me, she prevailed upon me to see if I would ask my doctor for that certificate, and I said, "The next time I visit my doctor on my regular hay fever injection, I will ask him."

Q. Let me read you your testimony on direct in that regard, and see if we can refresh your recollection.

Mr. E. H. Bloch: What page, Mr. Saypol?

[fol. 1845] Mr. Saypol: I will come back to that. Never mind.

Q. You say that she showed her terrible agitation by saying, "Was Ruthie nagging him for money again"?

A. Nagging him for money; that's right.

Q. Now, do you remember the incident in 1945, in February, when Ruth Greenglass called you aside and sent Dorothy into the bathroom and she was terribly disturbed because David said he wanted to steal some things from the Army to make some money; do you remember that?

A. That's right.

Q. And you told that to your wife?

A. I told her the substance of what happened.

Q. Did your wife say at that time, "Was Ruthie nagging David for money again"?

A. No, she didn't.

Q. That time she didn't say it?

A. No.

Q. Do you remember having testified regarding the typewriter at your house?

A. Yes.

Q. Is that so?

A. I remember, sir.

Q. Do you remember having testified:

"I don't recall her doing the typing at the house at all," "doing any typing at the house"?

Mr. E. H. Bloch: Excuse me, Mr. Saypol. Would you refer to the page or are you now talking about substance, generally?

[fol. 1846] Mr. Saypol: I am referring to substance. I want to see what the witness' recollection is.

A. I would like to specify the times concerning the typing, if it is all right with you, Mr. Saypol.

The Court: Well, I believe you testified to that. He is asking you a question. Can't you answer that?

The Witness: Well, would you repeat the question then, Mr. Saypol?

Mr. Saypol: Will the reporter be good enough to repeat my question to the witness.

(Question read.)

A. When I say "no typing at the house at all," I am referring to specifically the charges that were leveled against us.

Q. You mean, she didn't type any spy or espionage material at the house?

A. That's right.

Q. That she never typed, or she typed other kind of material?

A. That's right.

Q. You mean, somebody else typed that?

A. No, sir; nobody else typed that at my house. What I mean, sir, from the time of the birth of our first child until the present, there were only very, very few occasions that my wife sent any letters out, and they were letters [fol. 1847] either for jobs of mine or a business letter that I didn't write in longhand, or a letter like an appeal to the Government to be reinstated, but prior to the birth of our child, my wife did a lot of typing away from the home.

Q. Well, let's see what your testimony was at 1628:

"Q. Prior to the time of your marriage do you know whether or not your wife made a living as a typist?

"A. She did.

"By the Court:

"Q. When did you say you were married, Mr. Rosenberg?

"A. We were married on June 18, 1939.

"Q. What sort of typing did your wife do at the house in 1944, if any?

"A. I don't recall her doing the typing at the house at all.

"Q. How about 1945?

"A. 1945, too.

"Q. You mean, no typing?

"A. No, we didn't do any typing. If I wanted to write a letter for business or for a job or something like that that needed to be typed, I would have her do it for me."

Now, you say that she did do typing, but it was for the union or for Civil Defense; is that it?

A. Before the birth of our child, before 1943, that is when she did the typing.

Q. As a matter of fact, she did a lot of typing [fol. 1848] there, did she not?

A. At home?

Q. Yes.

A. No, sir; she did not.

Q. None at all?

A. I don't say "none at all." I say, on rare occasions she typed letters for me.

Q. Now, coming along in the years, do you remember the time when you were in business with David and his brother; do you remember one time you had an argument with him about shirking the job?

A. Many times.

Q. Well, do you remember after he started going to night school, you got mad at him because he was staying away or he wasn't turning out any work?

A. Yes, I do remember.

Q. What happened?

A. After certain length of period of time our fights culminated in the fact that he didn't continue going to school. He might have attended one session, that is, one six months' period, but after that he didn't attend any more; he had to drop his courses.

Q. Do you remember having any argument with him about the failure to turn out work; there was no production?

A. Oh, sure, many arguments.

Q. Do you remember any specific one?

A. Sure, many occasions.

Q. And is it fair to say that you objected to it?

A. I certainly did.

[fol. 1849] Q. Was Mrs. Greenglass present at any time when you objected?

A. Yes.

Q. When would you say that first started?

A. The arguments with Dave Greenglass?

Q. Yes.

A. Over the schooling?

Q. Yes.

A. I can't specify the years, but it was during the Pitt Machine Products' existence.

Q. What was the first year?

A. I would say it was in 1948 and '49 that we had arguments continuously on the business; a couple of arguments were on the school; and other arguments were on the way he handled the men in the shop and the kind of work he did.

Q. So that starting at least in 1948 you were at odd ends about the way he was contributing to the business?

A. That's right, sir.

Q. Now, when you told Ruthie about it, what did she say?

A. She said I was taking advantage of him; I was trying to make him a menial; I was trying to treat him like a worker and not a partner. As a matter of fact, we had so many arguments concerning his technical ability that at one point in the business I had to hire a foreman over him, and he told me in many words after that. "How do you think I felt, Julie, when I had to work for my own worker?" I told him, "Well, if you keep on producing

rejects and losing money in the business and you [fol. 1850] don't know how to handle the men, we will never make a living."

Q. And so from that point on, both you and Dave, that is, you and David Greenglass and Ruth Greenglass, were at swords' ends, were you not, about the way——

A. We had many arguments.

Q. —about the way he was conducting himself? Besides that, the business was bad, wasn't it?

A. That's right.

Q. Nobody was drawing any money?

A. During 1949.

Q. There came a time when David Greenglass wanted to take a punch at you, didn't there?

A. That's right.

Q. And finally, you bought David Greenglass out, but you didn't pay him; is that right?

A. That is correct.

[fol. 1851] Q. And you owed him $1000.?

A. No, that is not exactly the way it was.

Q. Well, how much did you wind up owing him?

A. Well, the agreement was that I would pay him $1000.

Q. Was any other sum involved? Was it larger or smaller?

A. No. He felt it should have been larger all through the negotiations.

Q. But in any event you came to an agreement that you owed him $1000.

A. That is right.

Q. Just because you wanted to have money available to pay Schein and told him he would have to wait for his money?

A. Exactly.

Q. So on the one hand we have you pitted against Greenglass for different reasons and you owing Greenglass $1000.?

A. That is right.

Q. And that is the situation as we have it when we get into May, 1950?

A. Right.

Q. Is that right?

A. Yes.

Q. Except that in February, 1950, or some time shortly thereafter in spite of the fact that you were opposed to each other, David was no longer at the shop?

A. No longer working there.

Q. Was he at the shop?

A. He came around on occasions.

[fol. 1852] Q. Well, on one such occasion David told you that an FBI agent had questioned him about the theft of uranium at Los Alamos?

A. That is right.

Q. We get now to a discussion in May about the liquidation or the dissolution of the business, and was it about that time that you had a heated discussion with David?

A. That is right.

Q. Is that the occasion when you almost came to blows or at least when he looked as though he was going to assault you?

A. No. That occasion was working in the business.

Q. So in addition to that heated discussion there was another heated discussion in May, 1950?

A. But we didn't come to blows at that time.

Q. But it was a heated discussion?

A. That is right.

Q. About the stock, is that right?

A. That is correct. By the way, Mr. Saypol, all these heated discussions about the stock and the resignation were mainly prompted by his wife. She was the one who kept agitating for these discussions.

Q. According to your wife, she was the one who was nagging Davey for money?

A. Correct.

Q. Of course, that had nothing to do with the inquiry at all on the possible theft of uranium?

[fol. 1853] A. Oh, no, sir.

Q. Now we come to the middle of May one morning when he came to your shop and you were sitting in your office, and he said, "Come on outside, I want to talk with you." Do you remember that?

A. Yes.

Q. When was that? Fix it a little better than the middle of May.

A. I can't fix it any better. I don't remember the exact day or week.

Mr. Saypol: Do we have a 1950 calendar here, Mr. Kilsheimer?

Q. Do you remember what day of the week it was?

A. No, sir, I do not.

Q. After he said, "Come on outside, I want to talk with you," what did you do?

A. First I told him I had to attend to my business, the shop. "Let us talk in here," something to that effect.

Q. Yes?

A. But he said, "It is important. I would like to see you outside."

Q. Well, now here we are with a calendar for 1950. Where shall we start in the middle of May? Would you like to start on the 17th or the 15th? You use that in front of you and tell me when.

A. I am sorry, Mr. Saypol, I can't pinpoint the exact date or exact week in May.

Q. Well, you pick it out as well as you remember [fol. 1854] it?

A. I can't. It can be anywhere from May 16th to May 31st.

Q. Let us start with May 16th, then: here was this fellow, your brother-in-law; you were not friendly with him and you were not friendly with his wife, and he came to you on this May 16 morn, and he said, "Come on outside, I want to talk to you, it is important," and you first said you had business to take care of, but finally you went with him; is that right?

A. That is correct.

Q. And what happened when you went with him? Where did you go and what did he say and what did you say?

A. Well, on that occasion we went into the Hamilton Fish Park which is opposite my shop, and he said to me he has got to have a couple of thousand dollars at once.

Q. A couple of thousand dollars?

A. Yes, $2,000.

Q. Well, did he say $2,000. or did he say a couple of thousand?

A. $2,000.

Q. You remember a little while ago I asked you whether he said $2,000. and you said no, he said a couple of thousand.

Mr. E. H. Bloch: If the Court please, I object to that. A couple of thousand is two thousand.

[fol. 1855] The Court: All right, let us not quibble about it. Go ahead.

The Witness: And I told him, "Dave, you know the arrangement I made with you, that only after I had finished my obligation to David Schein would I be able to get you any money to pay you." I said to him, "After all, I made an arrangement only to pay you $1,000. I thought that was agreed."

He said, "I need $2000." Now that is why I said it was two. And I told him I couldn't get the money for him. He said, "At least you can do me another favor."

I said, "What is it? Maybe I can help you."

He said, "Will you ask your doctor if he will make up a vaccination certificate for another person whom he didn't vaccinate"?

Q. What did you think, he had smallpox?

A. No, I didn't think so.

Q. What could he do with $2000. assuming he had smallpox? Did he tell you?

A. No, he didn't tell me. I asked him what it was for. He wouldn't tell me.

Q. Did you think it a little fantastic for your brother-in-law to come to you and say, "I want $2000. for a smallpox certificate"?

Mr. E. H. Bloch: Wait a second. I object to [fol. 1855-A] that.

The Court: I sustain the objection.

Mr. Saypol, is this a convenient place to suspend?

Mr. Saypol: I didn't realize it was so late. Yes.

The Court: All right. We will suspend until 2:15.

(Recess to 2:15 p.m.)

[fol. 1856] Afternoon Session

JULIUS ROSENBERG, resumed:

The Court: May I see counsel for a minute, please?

(Discussion at the bench off the record.)

Cross examination continued by Mr. Saypol:

Q. We were talking at the recess, Mr. Rosenberg, about this session with David Greenglass on May 16th.

Mr. E. H. Bloch: Now, if the Court pleases, I did not think that that was the testimony. I believe that the witness testified it may have been any time from May 16th to May 30th.

The Court: All right.

Mr. Saypol: Well, I am willig to fix it May 16th.

Incidentally, do we have a large calendar here?

Mr. Harrington: Yes.

Mr. Saypol: I have a large calendar, and if the Court will allow me, I can mount it on an easel and the jury can follow it as they did with the other calendar here.

(Mr. Saypol hands calendar to the witness.)

Q. Do you recall having been asked these questions and giving these anwers——

Mr. Saypol: At page 1660, Mr. Bloch.

[fol. 1857] Q. "Q Was this in May, 1950?

"A. I believe that is when it was.

"Q. Now, did you see Dave later that month?

"A. Yes, I did.

"Q. Tell us the circumstances.

"A. Well, about the middle of May, I can't tell the exact date, David came to my shop one morning. He came into my office. I was sitting in my office, and he said, 'Come on outside, I want to talk to you.'

"I said, 'Look, Dave, I got to conduct my business. Let us talk here.'

"He said, 'No, it is important. Let us go outside.'

"Well, I walked outside of the shop with him.

"He said, 'Let us walk into the park.'

"Q. Now, when you say park, to what park are you referring?" And then you described the park.

"Q. Tell us about the conversation you had.

"A. Dave said to me as follows: 'Julie, you got to get me $2,000. I need it at once.'

"I said, 'Look, Dave, you know the arrangements I made with you. I obligated myself to Dave Schein. I gave him a down payment of $1000. I have no cash left. You can't get blood out of a stone. I just don't have the money. What do you want it for?'

[fol. 1858] "He said, 'I need the money. Don't ask me questions.'

"I said, 'Dave, you are getting very excited. What is the matter with you?'

"Q. Was he excited?

"A. He was very excited. So he said, 'Well, if you can't help me like that maybe you can do something else for me.'

"I said, 'What is it? If I can help you I will.'

"He said, 'Will you go to your doctor and ask him if he would make out a certificate for a smallpox vaccination?'

"I said, 'Why don't you go to your doctor?'

"He said, 'Don't ask me that. I can't do it.'

"Q. Was Ruthie present at this time?

"A. No, she was not."

Q. How do you know she was not?

A. Well, I was with him alone in the park.

[fol. 1859] Q. Any other reason that fixes it in your mind that that was the date or about the time the conversation took place?

A. No.

Q. Wasn't May 16th the day when she gave birth?

A. I don't know.

Q. Was that about the time she gave birth?

A. It may have been a little after the birth.

Q. "A. No, she was not. And I said, 'It is highly irregular, but I will ask my doctor if he will do that.'

"and he said, 'Don't tell him who it is for, and also, incidentally, while you are talking to him, ask him if he knows what kind of injections are required to go into Mexico.'

"I said, 'Dave, are you in trouble or something?'

"He said, 'Don't ask me anything about it. You got to do this for me. If you can't give me the money I need, at least do this for me.' "

And the Court asked you at the time some questions about the fact that you were unfriendly or you were hostile to each other, and in the face of that you said he came to you and he put this twofold request to you, the $2000., and if you can't do that for him, the certificate showing that he had been vaccinated for smallpox, and also the addi-
[fol. 1860] tional matter of asking the doctor while you were at it what was required to go into Mexico.

Mr. E. H. Bloch: Well, if the Court please, is there a question?

The Court: There must be a question.

Mr. E. H. Bloch: Yes, I am waiting for it.

The Court: I am waiting, too.

Q. Did anybody ever ask you for $2000. for a smallpox certificate or what kind of injections were required to get into Mexico?

A. Yes, David Greenglass.

Q. I say, did anybody else ever ask you for anything like that?

A. No, sir.

Q. Did you proceed to find out why?

A. He was very agitated, and I asked him in the best way I knew how to ask him.

Q. Did you suspect why he wanted it?

A. I suspected he was in some trouble.

Q. Did you suspect perhaps that it had to do with the theft of gasoline from the Army?

A. Possibly, part.

Q. Did you suspect perhaps that it had something to do with the theft of uranium from Los Alamos?

A. Possibly.

Q. Did you suspect that it had something to do with the type of information relating to the atomic bomb?

[fol. 1861] A. No, I didn't suspect that.

Q. Did you suspect that he wanted to flee the country?

A. I didn't know exactly what he wanted to do but I suspected it.

Q. And all you did was to tell your wife after that?

A. That is correct.

By the Court:

Q. When did you find out for the first time that David Greenglass had been working on the atomic bomb project?

A. When did I find out? Well, when we were working in the shop together, he mentioned to all the people that he worked on the atomic bomb.

Q. When was that?

A. In 1946.

By Mr. Saypol:

Q. As a matter of fact, didn't you tell the agents of the FBI when they talked to you on June 16th that you knew he had been working on the atomic bomb in the fall of 1945 after the explosion at Hiroshima?

A. I don't know if I said that.

Q. Is it possible that you did?

A. I don't know.

Q. Did you know in the fall of 1945 that he had been working on the atomic bomb?

A. All I recall, sir, is after he got out of the Army he told me about working on the atomic bomb.

[fol. 1861a] Q. As far as your wife goes, when did you tell her about this incident? Incidentally, did you tell her all the details that you have told us here in court?

A. Well, I told her about the gist of the incident.

Q. Well, you must have told her about the money?

A. I told her about the money, and I told her about the vaccination certificate.

Q. Of course, that is when she said Ruthie must be nagging Davey for money again, is that right?

A. That is right.

[fol. 1862] Q. And did you tell her about Mexico?

A. I don't believe I told her about that.

Q. Did you talk to her about the uranium incident at that time?

A. Well, that incident happened before that, when David told me about the FBI coming to him about the uranium, and since he told me he had nothing to do with it, well, the incident didn't enter my mind anymore.

Q. Well, you are not answering my question. I am asking you when you told your wife, his sister, about this demand or these demands that he had made on you; in discussing it with her, did you remind her perhaps of the conversation with Ruth Greenglass in 1945, when she told you she was worried because he wanted to steal something from the Army?

A. Well, I don't remmeber if I reminded her at this occasion, but it was either this occasion or the second time I spoke to David Greenglass that I remarked about that incident.

Q. Well now, coming again to this $2000.-smallpox-Mexico incident, you told her, your wife, and she said, "Maybe Ruthie is nagging him for money again?" Have you told her about the 1950 incident, involving the questioning about the uranium?

A. I don't recall whether I told her at that time or at a subsequent conversation I had with her.

[fol. 1863] Q. Let's see what your testimony is, at page 1663:

"Q. You didn't attempt to ascertain from any other source or have anybody"—there is an error in the record—"or have anybody else like your wife talk to her brother to find out what was wrong?

A. Well, that night when I came home I told my wife about the incident and my wife told me, 'What is the matter? Is Ruthie nagging Dave again for money?'

"I said, 'No, it doesn't seem to be that. He must be in some trouble. I don't know what it is.'

"And I recall at that time in my mind the incident—the instant he told me what happened to him in February when the FBI had come around to visit him and question him about some uranium. I thought maybe it had something to do with that or had something to do with a conversation Ruthie had with me many years back."

So it did occur to you at that time, when you told your

wife about this demand, that there had been this disclosure in connection with uranium?

A. That is correct.

Q. What did you say about it?

A. That is exactly, just exactly what I said.

Q. What did she say?

A. Well, she was disturbed about it.

[fol. 1864] Q. What did she say to indicate her disturbance?

A. She said, "I hope he really isn't in any serious trouble, but if you can help him to get that certificate from the doctor, you ought to try to." I told her, "Well, you know, he has had it in for me and Ruthie has had it in for me, and I don't like to bother much with him." But she said, "He is still my brother and if you can help him in any way I think you ought to."

Q. That was on the occasion when you told her about this $2,000., this May 16th incident; is that right?

A. I wouldn't specify the date, sir. It was some time in the end of May.

Q. As a matter of fact——

By the Court:

Q. Did you know at that time that he probably wanted the certificate to flee from the United States?

A. Sir, I didn't know what he wanted to do. He wouldn't tell me what he wanted to do.

Q. What did you think?

A. I didn't know why he wanted the certificate.

Q. I mean, did the thought occur to you?

A. I didn't know what his purpose was. I tried to arrive at his purpose by questioning him.

Q. I know you say you don't know, but I am asking you, did the thought occur to you that he wanted it to [fol. 1865] flee the United States?

A. I didn't know; I didn't know what he wanted it for.

By Mr. Saypol:

Q. Did you tell us that you had told your wife that when you testified to that on direct?

A. I don't get the question there, Mr. Saypol.

Q. When, Mr. Bloch, your lawyer, questioned you and you told about the incidents on May 16th, first about the meeting with David Greenglass, when he made these demands, and then when you told your wife about the incident that night, did you tell us here that you had told your wife about the theft of uranium in February, or about smallpox certificates, or about Mexico?

Mr. E. H. Bloch: If the Court please, I object to it on two grounds. In the first place, Mr. Saypol insists upon fixing the conversation as of May 16th.

The Court: All right.

Mr. E. H. Bloch: This witness states that it may have been anywhere from May 16th and May 30th.

The Court: Very well. That is true. The witness has said sometime in that period of time.

Mr. Saypol: But I have given him the benefit of every doubt and fixed it as May 16th.

The Court: He apparently doesn't want that benefit.

[fol. 1866] Mr. Saypol: He looked at the calendar as I handed it to him, looked at the calendar and said, "It must have been May 16th or after that," and I am taking May 16th.

Mr. E. H. Bloch: I object to Mr. Saypol taking May 16th. It is not what Mr. Saypol has in mind; it is what comes out of that witness stand. This witness has insisted time and time again that it could have been any time——

The Court: I don't need any further argument on the subject matter. I have ruled. It is sometime between May 16th and the end of the month, the witness says.

Mr. Saypol: If Mr. Bloch has a preference, I will take any date he suggests.

The Court: He doesn't want any particular date. He wants two weeks.

Mr. Saypol: Well, with that expression of his position, I will take any date between those two weeks.

The Court: All right.

Mr. Saypol: Sometime between May 16th and May 23rd —or May 30th.

Mr. E. H. Bloch: That is correct.

Mr. Saypol: Between May 16th and Decoration Day; will you take it that way?

[fol. 1867] Mr. E. H. Bloch: I am not taking it any way. I will take it how the witness takes it, Mr. Saypol.

Q. Between May 16th and May 30th, you told your wife about Davey's excited demand for $2000. or the certificate; now did you testify on direct about telling your wife about the uranium incident or about the trip to Mexico or about the certificate from Mexico?

Mr. E. H. Bloch: I object to the form of the question. Now, if Mr. Saypol wants to read this witness' direct testimony——

The Court: No, your objection is overruled.

Mr. E. H. Bloch: I respectfully except.

A. Mr. Saypol, I don't recall whether it was the first time I discussed with her the first incident that I met with David, when he was very agitated, or the second incident, which took place, I believe in June, whether I discussed with her and told her that I think it has something to do with the uranium, the uranium incident and the vaccination certificate in question.

Q. Did you think at the time that he was contemplating flight from the country?

A. I have already answered that, Mr. Saypol, a number of times.

Mr. Saypol: Will the Court direct an answer?

The Court: He answered. He said he had no thoughts on the subject.

[fol. 1868] Q. When did you go to see the doctor, or when did you telephone to the doctor?

A. Well, it was after David came to my shop. I had a usual appointment of Tuesday and Thursday nights during the week, and before I would go over to my doctor's house, I would call him to ascertain that he would be home, and I called him on that occasion.

Q. How long after that night was it——

Mr. Saypol: Excuse me. I withdraw that.

Q. How long after the excited conversation with David about the $2000. did you call or see the doctor?

A. It was in that week.

Q. You are sure of that?

A. Yes, sir.

Q. Do you remember having given this testimony, at page 1665:

"A. Well, we had regular appointments for Tuesday or Thursday of the week. In order to ascertain that the doctor would be home at night and not out on a call I would call him. So I called him that night and said, 'Can I come over, Dr. Bernhardt?' "

Now, is it the same night that you called him?

A. No, sir.

Q. Or some other night?

A. Some other night. When I meant "that night," I meant Tuesday or Thursday night, the appointed nights. [fol. 1869] Q. You notice that May 15th is on a Monday, do you not (showing calendar to witness)?

Mr. E. H. Bloch: Is that what the calendar shows, Mr. Saypol?

Mr. Saypol: Let him answer that, if he will, please.

A. Yes, May 15th was on a Monday.

Q. And your meeting was sometime between Tuesday the 16th and the 30th?

A. That's right.

Q. Tuesday and Thursday, you say, were your regular appointments with Dr. Bernhardt?

A. Correct.

Q. And you saw it was a few days after that you called him?

A. That's right; it may have been the next day, two days or three days. I don't recall exactly how many days after that I called him.

Q. Well, that would make it any time between the 19th and the first week in June, that is, the 19th of May or the first week in June, depending on the talk with David in the two weeks between May 16th and May 30th; is that right?

A. That is what I would say, sir.

Q. Didn't you think there was anything unusual in David asking you not to disclose for whom this information was sought when you talked with the doctor?

A. I tried to elicit that information from him. He wouldn't give me any information.

[fol. 1870] Q. Did you tell the agents on February 16th when they interviewed you—excuse me, on June 16th, when you were interviewed about these incidents with David, $2000., a certificate, Mexico, and your request of the physician?

A. I did not.

Q. Well, after you talked to the doctor, did you tell David what the doctor said?

A. That's right, I did.

Q. What did David say?

A. He said he would take care of it himself.

Q. How soon after you talked with the doctor did you tell him that?

A. I would put it a couple of days, two, three or four days after. One to three days after I talked to the doctor. It was on my way to work one day. I dropped into his house. He was still home and I spent a few minutes with him and I told him that and he said he would take care of that himself, and I left and went to the shop.

Q. So that now we are probably a week at least after the day when he made these demands on you, are we not?

A. That is what I would judge the time.

Q. In other words, we are now in May 23rd or 30th, or into the first week in June?

A. It was before the first week in June because some time in June is when I had the second conversation with him.

[fol. 1871] Q. And how soon after you reported to him concerning the doctor did you have the second conversation?

A. I don't recall exactly the amount of time but it was somewhere in the beginning of June.

Q. Well, was it a week or ten days or fifteen days after the conversation, after you reported to him concerning what the doctor said?

A. Well, before that—well, it must have been a week or ten days after, about that time.

Q. Now we are definitely into June, aren't we?

A. The last conversation I had with him, the incident when we took a walk, was in June.

Q. Did you tell him the doctor said he did not want to give him a phony certificate? Is that what you told him?

A. I said the doctor would not give him a certificate. That is all I told him.

Q. Do you remember having been asked this question and giving this answer,——

Mr. E. H. Bloch: What page?

Mr. Saypol: Page 1672.

Q. "Q. Did you have any further conversations with Dave Greenglass after you told him that the doctor, your doctor, would not give a phony certificate?

"A. Yes, I did."

A. Well, I didn't say "phony certificate." I be- [fol. 1872] lieve somebody questioned me about it being a phony certificate.

Q. Well, who said it, your lawyer?

A. No.

Q. Did he say it was a phony certificate?

A. Well, naturally it would be a phony certificate if he didn't take any vaccination.

Q. You say it would be a phony certificate.

A. That's right.

Q. And you knew that then when he asked you about it, didn't you?

A. That is correct.

Q. And you knew that when you talked to him about it?

A. I asked the doctor if he would give him a vaccination and he said no, unless he took a smallpox injection. That is all there was to the incident.

Q. Well, I say you knew it would be a phony certificate?

A. If he did not take a vaccination.

Q. And yet you asked the doctor for it?

A. I did not ask the doctor for a phony certificate. I asked the doctor if he would do such a thing.

Q. Well, what were you asking for the doctor?

A. I was just getting information for David.

Q. Would that change its character, of the phony certi-

ficate, just because you asked? Or is that like your distinction between thinking of stealing and stealing?

Mr. E. H. Bloch: I object to the form of the [fol. 1873] question.

The Court: I will sustain the objection.

Q. How about it? Did you think you were asking for a phony certificate?

A. I just asked the doctor if he would give him a vaccination certificate, and he said unless he——

Q. Without an examination or without an inoculation, is that right?

A. I didn't make any statement like that.

Q. Well, how did you make it?

The Court: Well, what did the doctor say?

The Witness: He said he would not, he would have to vaccinate him.

The Court: In other words, you concluded from that that he would not give anybody a certificate that he had been vaccinated whom he had not vaccinated?

The Witness: That is correct, sir.

Q. And this is the man——

The Court: And you were asking him for a certificate, for somebody who had not been vaccinated, is that right?

The Witness: Well, I don't know if the person had been vaccinated by him or anybody else.

The Court: You were asking him for a certificate for someone whom he had not vaccinated?

[fol. 1874] The Witness: That's correct. I asked him his opinion about it.

The Court: You asked him whether he would give such a certificate.

The Witness: That is correct.

Q. This was the man with whom you had had these many heated arguments and disagreements, whom you knew—suggested, at least, wanted to steal and who was questioned about the theft of uranium and who had made a demand of $2,000. on you, and still you asked the doctor about giving him—about issuing a certificate without a vaccination, is that right?

A. I have already answered that.

Q. Yes or no, please.

A. About the certificate for vaccination, yes.

Q. Did you tell that to the agents of the FBI when you were talking with them when you said you wanted to co-operate on June 16, 1950?

A. They didn't ask me that question.

Q. You felt you didn't have to tell them since they didn't ask you, is that right?

A. Yes.

Q. When was the next meeting? How long after the report to him which you say was early in June?

A. Mr. Saypol, you have that incorrect. I didn't say I reported to him early in June.

[fol. 1875] Q. Well, let me read you your testimony.

Mr. Saypol: Mr. Bloch, at page 1673.

Q. "Q. Can you fix the time with more precision than you have up to now? You said, I think, a couple of days, a week, or even fifteen days later.

"The Court: Later than what, later than the first conversation?

"The Witness: Yes.

"The Court: And they talked about——

"The Witness: The middle of May.

"Mr. E. H. Bloch: When he told him that the doctor would not give him a phony certificate.

"The Witness: I would say it was near the end of May then."

That is when you said he wouldn't give the phony certificate.

Mr. E. H. Bloch: I can't even hear the answer.

The Court: You can't hear him because he hasn't given any.

The Witness: I am listening to Mr. Saypol.

Mr. Saypol: He nodded his head.

Q. Will you answer audibly, please?

"Q. Well, now, during that period of about two weeks, what did you do to try to find out what trouble David Greenglass was in?

"A. I didn't do anything.

[fol. 1876] "Q. You didn't press him or didn't have anybody try to find out?

"A. No, I didn't press him."

Now then, between the time that you reported to him that he couldn't have the certificate and this second meeting that you referred to, wasn't there some other experience with him?

A. Yes, there was.

Q. When was that?

A. I would say a couple of days after I told him about the fact that the doctor didn't give the vaccination.

Q. Would that be in June now?

A. It might be the beginning of June or it might be the end of May.

Q. It might have been the 14th of May, too, isn't that right?

A. No, it might not have been.

Q. Sure of that?

A. No. I believe it was after that incident.

Q. After the doctor's incident also?

A. That is right.

Q. And that was a few days, a week or ten days or fifteen days after the first conversation?

A. That is right.

Q. Now, what was the experience that you had with him a few days after you reported back to him about the doctor?

A. Well, he called me and I went over to see him after supper one night.

Q. How long after he called you did you go over to [fol. 1877] see him after supper one night?

A. It was either the same day or the next night.

Q. Yes.

A. When I got to his house, he came out in the hall and he pushed me toward the banister, I believe it was, the stairway, and said, "I have got some company at home. I can't talk to you now. Either I will get in touch with you or you get in touch with me." I just went home.

Q. Before you went over, did you receive a telephone call from him?

A. Yes, I did.

Q. What did he say?

A. He would like to see me.

Q. Did he say it was urgent?

A. I don't recall his exact words. He told me he would like to see me.

The Court: Mr. Saypol, let us see if we can't expedite this.

Mr. Saypol: Pardon me?

The Court: Let us see if we can't push this along.

Mr. Saypol: Yes, I am trying to.

Q. You are referring the conversation and you are asked to fix the time.

"A. Well, I don't know exactly how many days after that first walk we had in the park it was, but it may have been a week or ten days or fifteen days, I don't recall exactly how many, when I received a call from David [fol. 1878] Greenglass and he said, 'It is important. I would like to see you. Come over.'

Do you remember having been asked that question and having given that answer?

A. That call wasn't at the time he called me to come to his house to see him in the morning that I referred to that incident.

Q. Referring now to the call you got from him after you told him about the doctor's refusal to issue the certificate.

A. He did say it was important; something to that effect.

Q. You say he did say?

A. Yes, that is right.

Q. You waited a day or two before you went over, is that right?

A. That is right.

Q. Did you think it was unusual for you to respond to go to see him about important things when you wanted to have nothing to do with him?

A. Well, if you are referring to the incident in June when I went over to see him in the morning, he was very agitated on the telephone; he was very disturbed.

Q. No, let us refer to the incident after you reported back to him about the doctor's refusal. You stay on that if you will. Isn't that when he said to you it was important and come to see him?

A. That is right.

Q. And I say did you think it was unusual for this man with whom you were at loggerheads and with whom [fol. 1879] you had these heated discussions, who had made these demands on you, to have you come to see him?

Mr. E. H. Bloch: Now, wait. I wouldn't object to the question if the phrase about loggerheads is deleted.

The Court: All right. With whom you were having the heated discussions.

A. I don't think so, your Honor, because in the first place his other brother was tied up with his wife dying in the hospital, who lived in the neighborhood, and a third brother lived away from home and he had very little to do with him, and the only close relative he had was my wife, who was his sister, and myself.

By the Court:

Q. He wasn't going to her; he was coming to you.
A. That is right. He came to the shop.
Q. He didn't on any other occasion go to her, did he?
A. No.

By Mr. Saypol:

Q. Did you tell us about that before?
A. About what?
Q. About this wife who was dying and this brother who was out of the country and that is why you thought you would go to him; that it was all right for him to call you to come to him.
A. I am only trying to understand why he came to me. [fol. 1880] Mr. E. H. Bloch: I object to the testimony. There is no testimony about a brother being out of the country.
Q. Who was dying?
A. Bernie's wife.
The Court: I think this subject matter, Mr. Saypol, is amply covered.

Mr. Saypol: I never heard about this dying, whoever it was.

The Witness: Well, Bernie's wife had Hodgkin's disease. She was in and out of the hospital.

Q. Don't give us the gory details.

A. All right, you are asking me, Mr. Saypol.

The Court: Let us not have any more. He said it was her brother's wife.

Q. In any event, you waited two or three days after he told you it was important. Then you went there and he had company and he couldn't talk to you, is that right?

A. That is correct.

Q. How long after that did you receive word from him that he wanted to see you again?

A. A couple of days after that.

Q. Then when would that be? What month?

A. I would say in June.

Q. And what happened then?

A. Well, it was either the next morning or two mornings [fol. 1881] after that I went to his house.

Q. And what happened?

A. We went downstairs in the street and we took a walk toward East River Drive.

Q. Yes.

A. And we had a conversation. David told me, "Julie, you have got to get me a couple of thousand dollars." He was very excited at this time. I told him, "Calm down, take it easy. I told you already the last time I can't give you any money."

Q. Let me interrupt you a minute. Let us go back to when you went to his house and he told you he couldn't talk to you because he had company. Did you tell that to anybody?

A. I told my wife.

Q. What did you tell her?

A. I told her about the fact that he called me over to see him and I didn't see him; I went for nothing.

Q. You couldn't figure out what it was?

A. No.

Q. Do you remember being asked these questions and giving these answers:

"Q. What did you tell her? What did she say?" meaning your wife.

"A. I told Ethel, that 'your brother is in some trouble; he is acting peculiar and strange and I don't know what to do about it; and you know that he has had it in for me and our relations haven't been the best'; and she prevailed upon me to see if we can do something to help him [fol. 1882] out, if he needs some help."

Now, which is the truthful version of what you told your wife? What you testified there or what you testified——

Mr. E. H. Bloch: I object to the form of the question on the ground that it is argumentative and it is a summation.

The Court: Oh, on that ground it is overruled. He is entitled to know which is the true version.

Mr. E. H. Bloch: It is also presupposing a state of facts——

The Court: Let us find out.

Mr. E. H. Bloch: I am perfectly willing that Mr. Saypol exhaust this line of questioning, but the phraseology he uses I object to.

The Court: Can you answer the question?

The Witness: I would say it was either on that occasion or the second occasion that I said that because it was only after I had all these facts of these incidents at my fingertips that I was able to make some kind of conclusion that he was in some serious trouble.

The Court: I think the subject matter has been very well exhausted and I would suggest, if you have just a few more questions on it, all right; otherwise, go on to something else.

[fol. 1883] Q. Didn't you tell us before in response to your lawyer's question that it was after you went to his home and he told you he was busy, he had company, to come back in a few days, that you then went and told your wife Davey is in some kind of trouble, he is acting peculiar?

A. I believe that is correct.

Q. I mean, you testified to that before?

A. That is correct.

Q. Is that actually what happened?

A. Yes, sir.

Q. And your answer a little while ago in response to a similar question was not accurate?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: It is a characterization. That is for the jury to decide.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Do you remember having told us a little while ago that you didn't say anything to your wife about it?

A. Well, I did say something to my wife about it.

Q. Do you remember having told us you didn't tell her anything about it?

A. At this moment, maybe I didn't recall whether I told her at that specific time or a week later, or a couple of [fol. 1884] days later, when the second incident occurred.

Q. All right, now. Tell us about the next incident. What was it preceded by? How was the meeting arranged?

A. David had called me and he told me it was urgent that he see me at once.

Q. Was that still in May or June? When was it that he called you?

A. It may have been the first or second day of June, or the last two days in May. I can't specifically tell you which day it was.

Q. Go ahead.

A. And I went over to see him.

Q. What did he say to you when he called you?

A. He told me it was very urgent, he had to see me at once.

Q. This is the second time he told you it was urgent or important?

A. Yes.

Q. Or was that the third time?

A. I don't know. I don't remember if it was the second or third time, but he told me at that time.

Q. Go ahead.

A. And I went over to see him in the morning before I went to work. I got up to his house. We went downstairs and headed towards East River Drive and that is the time

he asked me for $2,000. He said I have got to get it for him, and he asked me to get it from my relatives, from my family. I told him I couldn't do anything of the sort. [fol. 1885] Then he says, "Well, can you give it to me from the business?"

I said, "No, the business has all it can do to keep on its feet right now."

He said, "I have got to have the money, Julie, you must help me."

I said, "I realize you are in trouble. Take it easy. Don't get so agitated. But I can't give you any money right now."

And as the conversation went on, he got more and more excited, and at that point he said to me, "If you don't give me the money, you are going to be very sorry." And I saw that he was getting mad, and I was afraid that he might do me bodily harm, and I decided to cut the conversation at that point.

I said, "Look, Dave, it is warm. Go home and take a shower, and I am going to do some work. Goodbye." And I left him.

Q. Is that the morning when you went over to the house and you saw his wife there? Did you see his wife there at that time?

A. I believe I saw his wife at that time.

Q. Is that the time when she acted coolly toward you?

A. At that time, yes, and on another occasion after that. [fol. 1886] Q. I am talking now about this time. Was she cool to you that morning?

A. I don't believe I even talked to her much at that time. I just saw David.

Q. Do you remember having been asked this question and giving this answer:

"Q. Did you notice anything about Ruth's reception of you in terms of coolness or warmth?

"A. Well, she was cool."

Do you remember giving that answer?

A. That is correct.

Q. Is that why you told him to go home and take a shower? You wanted him to cool off, too?

The Court: Oh, let us not have that. Get along, Mr. Saypol.

Q. Well, by that time you knew that there was something about to happen to you; he was threatening you?

A. That is correct.

Q. Now, in June did you tell your wife about that?

A. I certainly did.

Q. What did she say?

A. I told her about that and she was very worried.

Q. What did she say?

A. She said, "This is bad. We ought to do something. We ought to see that he doesn't do anything foolish."

Q. Yes.

A. She wanted to call her brother.

[fol. 1887] Q. Yes.

A. I said, "I don't know if Ruthie knows about David's trouble, and you know that Ruthie just came from the hospital with a new baby; her burns are festering on her. I don't even know if Davey is home." It was in the evening. And I said, "Don't aggravate yourself about it. I don't think we should have anything to do with Davey after he tried to blackmail me like that."

And she said, "Yes, I realize that. You have had trouble with Davey, but he is still my brother, and when there are differences between people——"

By the Court:

Q. Blackmail you? Where did he try to blackmail you?

A. Well, he threatened me to get money. I considered it blackmailing me.

Q. What did he say he would do if you didn't give it to him? You said he said you would be sorry.

A. Yes. I consider it blackmail when someone says that.

Q. Did he say what he would do to you?

A. No, he didn't.

Q. Did he say he would go to the authorities and tell them you were in a conspiracy with him to steal the atomic bomb secret?

A. No.

Q. Do you think that was what he had in mind?

[fol. 1887a] A. How could I know what he had in mind?

Q. What do you mean by blackmail then?

A. Maybe he threatened to punch me in the nose or something like that.

[fol. 1888] By Mr. Saypol:

Q. So in any event you wanted to be through with him but your wife prevailed on you, that maybe you ought to do something for her brother?

A. That's it.

Q. And then what did you do?

A. Well, on my way to work one morning I dropped in to see him for a couple of minutes.

Q. How long after the conversation with your wife did you drop in?

A. A couple of days, I would say.

Q. You let a few days go by?

A. That is right because I was busy with my business.

Q. And what did you find?

A. I found Dave and Ruth there. I went into the house. I remember sitting at the table, and Ruth couldn't get around very well because her burns were bothering her, and everybody was sort of quiet, we didn't do much talking. I asked David how he was and he said "All right."

Q. Did you talk to him about what he needed money for?

A. No, because I did not know if Ruth knew about his troubles.

Q. Did you talk to him about why he wanted to go to Mexico?

A. No, I did not.

Q. Did you talk to him about why he wanted a vaccination certificate?

A. I did not.

Q. What was their attitude toward you?

[fol. 1889] A. Their attitude was like ice.

Q. You mean they had taken a shower?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Don't answer it.

Mr. Saypol, do you suppose if I declare a recess you could shorten your cross-examination?

Mr. Saypol: Well, I will try, although I will be finished fairly soon.

The ordinary recess won't come for a half hour and I will be finished long before that.

The Court: Well, I thought perhaps if you could sit down at your table you would probably be able to cut some of your cross.

Mr. Saypol: No, I can move right along.

The Court: All right.

By Mr. Saypol:

Q. So we are now down to June 16th when the agents came to see you early in the morning, is that right?

A. That's correct.

Q. They weren't abusive and they weren't offensive, were they?

A. They were not.

Q. Do you remember having talked with your wife first before you went to talk with them about submitting to questioning?

A. That is correct.

[fol. 1890] Q. That is when she said to you "It probably is about Davey, we ought to try to help."

A. That is right.

Q. It was the day before Davey was taken into custody?

A. That is correct, sir.

Q. Now, in that setting, being questioned by the agents of the FBI, you were aware of all these preceding facts regarding Davey's suggested thefts, the questioning regarding the theft of uranium by him, you knew that he had been at Los Alamos, you knew that certain persons had been apprehended in respect—in regard to the theft of secrets relating to the atom bomb; you knew then that Davey had worked on the atom bomb; you knew of your own difficulties with him; you knew of the demands that he had made on two occasions of you for money; you knew of his requests of you regarding phony certificates; you knew of his suggestion or his statement about getting into Mexico, is that right?

Mr. E. H. Bloch: Wait a second. I object to the form of the question upon the ground that it is pure summation and upon the ground that this very question was asked and has already been answered.

The Court: Even if you did not raise your voice I would have sustained the objection.

[fol. 1891] Mr. E. H. Bloch: Well, I apologize, your Honor, but I am trying to restrain myself.

The Court: You know it is not unknown for cross-examiners to sum up in questioning.

Mr. E. H. Bloch: Yes, I know.

Mr. Saypol: I can do it that way—it will take me a little longer to do it the way Mr. Bloch wants it.

The Court: No, no, don't do it the way he wants it and don't let it take you any longer.

Q. You said to the agents that you would cooperate with them?

A. Correct.

Q. Did you tell them at that time, on June 16th, that at the end of July or August 1944 you knew that David was at Los Alamos, New Mexico?

A. I don't recall saying that to them.

Q. Do you recall having told the agents that in the fall of 1944 Ruth Greenglass had told you that David was at Los Alamos?

Mr. E. H. Bloch: Now if the Court pleases, I submit that this question has been asked and has been answered.

The Court: Well, let him ask it once more.

A. I don't recall stating that.

Q. Do you recall having told the agents that you [fol. 1892] did not know it was the atom bomb until after the first atom bomb was dropped at Hiroshima?

A. I don't recall that.

Q. Do you recall having told the agents that you assumed that since David was working on a secret Project in New Mexico, when you heard about the falling of the atom bomb on Hiroshima, you then surmised or you then assumed that it was the atomic bomb that he had been working on?

A. I don't recall that, Mr. Saypol.

Q. Do you recall on June 16th, 1950 having told the agents that in early November 1944 Ruth had spoken on the phone to David in Albuquerque and about a week or so thereafter she went out to New Mexico to visit David?

A. I don't recall that. I already answered that.

Q. Do you recall having told the agents that David obtained a furlough to see Ruth when she came to Albuquerque?

A. I don't recall that, sir.

Q. Do you recall any conversation about David in 1944 and 1945, between you and the agents?

A. As I stated on my direct examination, Mr. Saypol, that the agents kept on questioning me and directing my mind to a period where they wanted me to answer covering certain dates. I didn't recall at that time anything about the dates. I didn't recall even the seasons of [fol. 1893] the year he had his furlough. They kept on bringing my attention to them so that I could answer to cover a certain period.

Q. Did the conversation relate to David Greenglass?

A. Yes, it did.

Q. The questioning related to David Greenglass at Los Alamos, did it?

A. It started—that is correct.

Q. Do you recall Agent Harrington having asked you whether you had ever seen David alone at the time of his furlough?

A. I don't recall that, sir.

Q. Do you recall having told him that Davey liked to play pool so you went to play pool with him at Sammy's?

A. Possibly I might have said that; I don't recall.

Q. Well, is it a fact, did you play pool with him at Sammy's?

A. I don't know; I believe I played pool.

Q. You mean you can't remember whether you played pool with him at Sammy's and you can't recall whether you told it to the agents?

A. That is correct.

Q. Do you remember having been asked if you had contacted Ruth prior to her leaving for New Mexico and to

sound her husband out to see whether he would like to turn over confidential information to the Soviets concerning the secret Project that he was working on [fol. 1894] at Los Alamos?

A. I don't understand that question.

Q. Did the agents ask you on June 16, 1950 whether you had talked to Ruth before she went to New Mexico and whether you had suggested to her that she get information from David relating to the Project that was out there?

A. They asked me that question and I told them I did not say anything of the sort.

Q. You denied it absolutely?

A. That is correct.

Q. Do you remember the agents asking you whether you had got in touch with Ruth in New York City and made such a request of her?

A. I do not know whether they asked me that or they did not ask me that.

Q. Do you know that you denied it?

A. I know that I did not make such a request.

Q. Did the agents ask you as to whether arrangements had been made for her to be contacted in Albuquerque by the Soviet agents and what means was to be used?

A. They asked me that question.

Q. And what did you do?

A. I told them I did not do anything of the sort, I did not make any arrangements. I can't recall exactly all the questions and answers.

Q. Did you deny to them at that time that you had the technical knowledge sufficient to make such requests of anybody?

[fol. 1895] A. If they asked me that question I would deny that.

Q. Did they ask you concerning this meeting with a man in an automobile up around 42nd or 59th Street?

A. I believe they did ask me about it.

Q. And did you deny it?

A. I did deny it.

Q. And did you then ask the agents whether David had accused you of doing these things?

A. That's correct.

Q. And did you say to the agents that you wanted to be confronted with David?

A. That's right.

Q. And when they asked you what you would do if you were confronted, you said you would deny it, is that so?

A. I would call him a liar to his face.

[fol. 1896] By the Court:

Q. Did you on that occasion tell the agents this story about the demands that David had made?

A. I did not, sir.

Q. What was the reason for not telling them that?

A. Because I had no idea David was accusing me.

Q. Well now, the agents told you that he had accused you, didn't they?

A. Well, I don't know, sir. What they say and what is a fact sometimes isn't always——

Q. Well, they did tell you that, didn't they?

A. They told me near the end of the conversation that David was accusing me of asking him to get information.

Q. And you didn't say to them anything about David's request for money in May or June of 1950, nor did you tell them the story, as I understand it, of David's anticipated thefts from the Army, which were related to you by Ruth Greenglass in February 1945?

A. No, I didn't tell them, your Honor. The way I was brought up, I don't inform on my wife's brother, and whatever he did, I didn't know about and that is for him to decide, for him to answer.

Q. Then what you are saying is, even if there is something to inform about, you don't inform?

A. No, I didn't say that, sir, but since I was not aware of what troubles he was in, I would not aggravate his troubles [fol. 1897] by telling what my opinions of those troubles are.

By Mr. Saypol:

Q. Here was this man who had threatened to blackmail you, in your own words; here was this man who patently had charged you with the theft of atomic secrets in behalf of an espionage ring, and you say that you didn't feel called

upon at that time, when questioned by the agents, to make these disclosures that you knew about regarding David Greenglass?

A. I wouldn't answer it——

Mr. E. H. Bloch: Wait a second. I merely object to this first couple of words of the question. I don't object to the substance of the question itself.

The Court: All right, overruled.

Mr. E. H. Bloch: I respectfully except.

The Court: Have you heard the question?

The Witness: No, sir.

The Court: Will you re-read the question, please.

(Question read.)

A. In the first place, David Greenglass did not accuse me, according to what the agents said, of stealing secrets. They said he accused me of asking him to steal secrets. In the second place, I didn't know if David Greenglass said that, and I ask the agents to confront me with David Greenglass and I said, "He must be out of his mind," or some-
[fol. 1898] thing, "to say things like that."

Q. You testified that you owed your primary allegiance, you felt, to the United States of America?

A. That is correct.

Q. You found out about the theft of atomic secrets in the interests of Russia; do you think that was the proper thing to do?

A. It certainly is not a proper thing to do.

Mr. E. H. Bloch: Wait. Pardon me, Mr. Saypol. Do you mind, your Honor, if the question is read back and the answer is given?

The Court: All right, read it back.

Mr. E. H. Bloch: Because I am not quick enough.

(Question and answer read.)

Mr. E. H. Bloch: Now, if the Court please, I am assuming that this question was asked in a certain context, that is, June 16, 1950, and I now object to the question upon the ground that it is not borne out by the evidence, and it presupposes a state of facts not proven.

The Court: All right, overruled.

Mr. E. H. Bloch: I respectfully except.

In fact, your Honor, if I may say, this witness has testified that he did not know at that time——

The Court: We know very well what he has testified to [fol. 1899] and the jury's recollection will govern, not yours, not mine, not Mr. Saypol's.

Mr. E. H. Bloch: I am perfectly satisfied with that.

Mr. Saypol: Do we have the answer?

(Last question and answer read.)

The Witness: Your Honor, I didn't find out about these things. I heard it in court here. I heard in court Greenglass admits that he is a spy.

By Mr. Saypol.

Q. You mean, that when the agents told you that Greenglass had said these things, or when they said to you in their questioning that you had had these conversations with Ruth and done these things through Ruth and with David, that you didn't accept it, that you were being accused; is that it?

A. I said I was being falsely accused.

Q. Did you tell that to the agents?

A. I certainly did.

Q. Did you tell it to anybody else?

A. Yes, I did.

Q. Are you a member of the Communist Party today?

Mr. E. H. Bloch: I object to the question upon the ground it is incompetent, irrelevant and immaterial.

The Court: Well, let's see.

A. I refuse to answer that question.

[fol. 1900] Q. Were you a member of the party——

The Court: You mean, on the ground that to do so will tend to incriminate you?

The Witness: That's right; will tend to incriminate me.

Q. Were you a member of the party in 1944 and '45?

A. I still refuse to answer the question.

Mr. E. H. Bloch: Just a moment. I just want to get my objection for the record. Same objection, your Honor.

Q. Did you, in the month of June 1950, or in the month of

May 1950, have any passport photographs taken of yourself?

A. No, I did not.

Q. Did you go to a photographer's shop at 99 Park Row and have any photographs taken of yourself?

A. I have been in many photographers' shops and had photos taken.

Q. Did you have any taken in May or June of 1950?

A. I don't recall. I might have had some photos taken.

Q. For what purpose might you have had those photographs taken?

A. Well, when I walk with the children, many times with my wife, we would step in; we would have we would pass a man on the street with one of these box cameras and we would take some pictures. We would step into a place and [fol. 1901] take some pictures and the pictures we like, we keep.

The Court: He is not asking you that. He is asking you about these particular pictures in June 1950. What was the purpose of those pictures?

The Witness: Just—if you take pictures, you just go in, take some pictures, snapshots.

Q. What did you tell the man when you asked him to take those pictures in May or June 1950?

A. I didn't tell the man anything.

Q. Are you sure of that?

A. I don't recall telling the man anything.

Q. See if you can't recall. Try hard. May or June 1950, at 99 Park Row.

A. I don't recall telling the man anything.

Q. You mean, you might have told him something, but you don't recall it now?

A. I don't recall my saying anything at this time.

Q. What don't you recall? Tell us that.

A. I don't know, sir.

Q. Do you remember telling the man at 99 Park Row that you had to go to France to settle an estate?

A. I didn't tell him anything of the sort.

Q. What did you tell him——

A. I didn't tell him anything.

[fol. 1902] Q. ——at the time that you had the pictures taken?

A. What pictures are you talking about?
Q. In May.
The Court: The pictures at 99 Park Row.
The Witness: I don't know if it was 99 Park Row that I took the pictures.
Q. Where was it, if you don't know it was 99 Park Row?
A. I don't know. I have taken many snapshots.
Q. Passport pictures?
A. Not passport pictures.
Q. Did you ever tell anybody that you wanted pictures in order to go to France to settle an estate?
A. I didn't tell that to anybody.
Q. You don't recall it, or are you sure you never said that?
A. I am sure that I never said that.
Q. Now, do you recall, or are you sure now that you didn't have any passport pictures taken in 99 Park Row, in May or June, 1950?
A. I may have taken pictures, not—I didn't take any passport pictures.
Q. May or June 1950?
A. I might have taken pictures.
Q. For what purpose have you taken pictures in May or June 1950?
A. I have already answered that.
Q. May we have an answer?
A. Just taken pictures.
Q. Where are the pictures?
A. If the pictures were good pictures, I kept them at home.
[fol. 1903] Q. What kind of pictures were they? Describe them.
A. I don't recall.
Q. You were alone, you and your children, or you and your wife, or what?
A. There were many pictures I took with my family.
Q. In May or June 1950?
A. That's right.
Q. At the time David was talking about going to Mexico, what kind of pictures did you take and how many?
A. I don't recall.

Q. Do you know then that Sobell was around when you took those pictures?

A. I don't know whether he was around or wasn't around.

Q. When did you find out that Sobell was in Mexico?

A. When did I find out?

Q. You heard my question, didn't you?

A. Yes.

Q Was it a hard one?

A. Yes, I heard that Sobell was in Mexico through the newspapers.

Q. What did you have to do with sending Sobell away?

A. Nothing.

Mr. Kuntz: I object to that, if your Honor please. There is no testimony here that he had anything to do with sending Sobell or anybody else away.

The Court: You are excited, Mr. Kuntz.

Mr. Kuntz: I mean, to ask a question that way, I can convict anybody by that kind of question.

[fol. 1904] The Court: The jury will please disregard that statement by Mr. Kuntz, supposedly in behalf of his own client.

Mr. E. H. Bloch: If the Court please——

The Court: Your objection is overruled.

By the Court:

Q. Did you have anything to do with sending Sobell away to Mexico?

A. I certainly did not, sir.

Mr. Kuntz: That was not the question, Judge.

The Court: All right, I have asked the question, so the other question has gone by the board.

Mr. Kuntz: You notice I didn't object to your question, because it was a proper question.

The Court: Very well.

Mr. Phillips: But, your Honor made no ruling on the objection of Mr. Kuntz to Mr. Saypol's question.

Mr. Kuntz: I am satisfied with his answer.

Mr. Phillips: I would like to have a ruling that it was an improper question.

Mr. Kuntz: I am satisfied with it.

The Court: Are co-counsel fighting with each other there? I don't understand it.

Mr. Phillips: No, we are both on the same side, except that I am a little more emphatic on the first part.

The Court: Please be seated, Mr. Phillips. We have [fol. 1905] heard enough of that.

Mr. Saypol: I have had all I want.

The Court: Very well, we will take a recess.

Mr. Kuntz: May I ask a couple of questions on cross?

The Court: Just a moment. We are taking a recess.

(Short recess.)

The Court: Mr. Kuntz, do you want to cross-examine?

Mr. Kuntz: Just a couple of questions.

The Court: Go ahead.

Cross Examination

By Mr. Kuntz:

Q. Mr. Rosenberg, I don't know whether this has been covered yet, but I would like to cover it. There was some testimony by Elitcher, that sometime in July, 1948 he got into Sobell's car; that Sobell had a can, I think he described it, it looked as if it might have 35 millimeter film; that he went to Catherine Slip; that he left the car and that in the course of that trip he said he had to deliver that to you. Now, I want to know whether in July 1948 or any time from the beginning of the world to today did Sobell ever give you a can with any film in it?

A. No, he did not.

Mr. Saypol: You had better change that question. I don't [fol. 1906] think the witness is competent to answer. It goes back a little bit too far.

The Court: Yes, we won't cover it from the beginning of the world. We will cover it, say, from 1948.

Q. Did he ever give you any can with any film in it?

A. No, sir; he never did.

Q. Did he ever give you any kind of information belonging to the Government, whether it was secret or not?

A. No, sir; he didn't give me any information like that.

Q. Now, Mr. Rosenberg, I want to read, if I may, from Elitcher's testimony, and then question you on it.

Mr. Kuntz: Page 354, Mr. Saypol, beginning in the middle of a paragraph at the bottom.

Q. (Continuing) "He came back approximately a half hour later, or perhaps a little shorter, and as we drove off I turned to him and said, 'Well' " — now, this is Elitcher talking — " 'Well, what does Julie think about this, my being followed' " — this is still Elitcher talking — "He said, 'It is all right; don't be concerned about it; it is O.K.' He then said Rosenberg had told him that he once talked to Elizabeth Bentley on the phone but he was pretty sure that she didn't know who he was and therefore everything was all right. We proceeded back to the house."
[fol. 1907] Now, I want to question you: Did you ever have any conversation with Sobell, in July of 1948, or at any other time, when you used those words, that Elitcher testified to, about Bentley, or about his being O.K., about his being followed; did you have any such conversation with Sobell?

A. No, sir; I didn't have any such conversation with Sobell.

Q. Did you ever tell Sobell anything about Bentley or anybody else who is mentioned in this trial?

A. No, sir; I did not.

Mr. Kuntz: Thank you, that is all.

Direct Examination

By Mr. E. H. Bloch:

Q. Mr. Rosenberg, Mr. Saypol, on cross-examination went into some matters relating to your membership as a policyholder in the International Workers Order, commonly known as IWO——

The Court: Speak up; speak up. This is no secret.

Q. (Continuing) I now show you a letter (handing) and ask you whether that refreshes your recollection as to whether or not you were a policyholder in the International Workers Order?

A. Yes, it does.

[fol. 1908] Q. And after you had been taken into custody did you instruct anybody to continue to pay your premiums in that organization?

A. Yes, I instructed you to continue to pay my premiums.

Q. And can you tell us now how you paid—how you paid your premium (handing to witness)?

A. I made out a check to the International Workers Order and I sent the check to the secretary of the Lodge to which I belong.

Mr. E. H. Bloch: I am sorry, I am going to mark this paper that I previously alluded to, for identification.

The Court: Don't go too much into it.

Mr. E. H. Bloch: Just two more questions. I promised to be short and I will.

(Marked Defendants' Exhibit G for identification.)

Mr. E. H. Bloch: And will you also mark this for identification.

(Marked Defendants' Exhibit G-1 for identification.)

Q. I now show you Defendants' Exhibit G-1 for identification, and ask you whether that refreshes your recollection as to the name of the secretary of the Lodge of the IWO to which you belonged and to whom you made your payments.

Mr. Saypol: Just a moment, before he——

[fol. 1909] A. That's correct.

Mr. Saypol: Just a moment. Don't answer when I object, please.

It seems to me this witness should be questioned without refreshing, unless it is necessary.

The Court: Well, the topic isn't of great importance anyway. Go ahead, let us finish this up.

A. Yes, it does, Mr. Bloch.

Q. What was his name?

A. Albert Linnick.

Mr. E. H. Bloch: I now offer in evidence——

The Court: What is the relevancy of whether he paid a premium on the IWO policy?

Mr. E. H. Bloch: Mr. Saypol is the one who questioned his membership in the IWO.

The Court: Oh, wait a minute. He questioned him on a different basis entirely, and you know that. He isn't questioning whether he paid premiums or not. He wanted to know something about the organization itself.

Mr. E. H. Bloch: If that is the purpose, I am going to desist from further questioning.

The Court: All right.

Mr. E. H. Bloch: As long as it is conceded that this witness was a policy holder in the International Workers Order, I am not going to go on with the subject any further.

[fol. 1910] The Court: I think that is the very thing that he was trying to prove.

Isn't it, Mr. Saypol?

Mr. Saypol: Of course.

The Court: All right.

Mr. Saypol: As your Honor said, my approach was from an entirely different point.

Mr. E. H. Bloch: All right, there is no dispute about that.

The Court: Go ahead.

Mr. E. H. Bloch: I will not ask any further questions about that organization.

By Mr. E. H. Bloch:

Q. Now between the time that Mr. Saypol cross-examined you the other day and today, did you have an opportunity to think more closely about the number of classmates that you had at CCNY and whom you saw subsequent to your graduation from that institution?

A. I did, sir.

Q. And can you give us now the names of some other classmates of yours with whom you had either social or business relations after your graduation?

A. Well, there were people who were in my squads in the electrical engineering courses: Mr. Aaron Coleman who subsequent to graduation I met at Fort Monmouth when I [fol. 1911] was assigned there; Ingvar Jensen, another classmate of mine. Then there was Stanley Rosenberg, who was in some of my classes. I worked with him in the Signal Corps and I got business from him when he was connected with

Espe Radio and subsequently I got business from him when he went into his own business in Telmor in Long Island City. I used to have lunch with him at times. Then there was Jack Cantor who worked with me in the Signal Corps and subsequently worked for Radio Receptor Company. I went there to get business from him, and I met him at a number of contractors' plants in recent years, '49 and '50, and there were other people like Herbert Benowitz and Joseph Benjamin whom I went to school with, worked with and subsequently tried to solicit business when they were connected with other concerns.

The Court: Did you see any of these people socially?

The Witness: The only way I got to see them socially was by going out to lunch with them.

Q. In connection with——

The Court: In connection with your business?

The Witness: With my visiting them.

The Court: You did not meet them in any social or political groups of any kind?

The Witness: No, sir, I did not meet any of the people [fol. 1912] that I discussed here in a political group.

Mr. E. H. Bloch: Now I am going to ask a question now, your Honor—I do not know whether I covered it in my direct examination; it is just one question. I may have covered it.

Q. Did you ever tell Dave Greenglass that you stole a proximity fuse?

A. I never told him anything of the sort, Mr. Bloch.

Q. Did you ever steal a proximity fuse?

A. I did not, sir.

Mr. E. H. Bloch: May I call upon the Government to produce all the pictures that were taken by the Government agents from the home of the defendants Julius Rosenberg and Ethel Rosenberg at 10 Monroe Street, Manhattan, at the time of the arrest of this witness, or at any time subsequently——

The Court: Why didn't you ask Mr. Saypol that question—why didn't you, during the recess, tell him that you wanted that?

Mr. E. H. Bloch: I did. Mr. Saypol wasn't here. I asked one of the gentlemen of his staff.

Mr. Seypol: Do you mean passport pictures?

Mr. E. H. Bloch: No, I mean all the pictures, all the pictures.

Mr. Saypol: We will have them brought down right [fol. 1913] away.

The Court: All right.

Mr. Harrington: Well, they are on the way down now, Mr. Bloch.

Mr. E. H. Bloch: This is the last question.

The Court: I wish they would come down much sooner. We always seem to be waiting for something.

Mr. E. H. Bloch: May I make this suggestion, your Honor: This is the last point I am going to cover with this witness. I have two witnesses here who will be extremely short—probably three minutes apiece,—and while we are waiting——

The Court: All right.

Mr. E. H. Bloch: And for expedition——

The Court: Go ahead.

Mr. E. H. Bloch: —may I call them to the stand and ask that then this witness may be recalled.

The Court: All right.

(Witness temporarily excused.)

[fol. 1914] John Gibbons, called as a witness on behalf of defendants Rosenberg, being, being duly sworn, testified as follows:

The Court: Is this testimony that you have discussed with the Government?

All right, go ahead.

Direct Examination

By Mr. E. H. Bloch:

Q. Mr. Gibbons, are you an employee of the Herald-Tribune?

A. Yes, I am.

Q. And is that the organization that prints and publishes the New York Herald-Tribune?

A. Yes, sir.

Q. And have you appeared here in response to a subpoena duces tecum that has been served upon the Herald-Tribune, Inc.?

A. Yes, sir.

Q. I believe, which is the owner of the Herald-Tribune?

A. Yes.

Mr. Saypol: Does Mr. Bloch want to put a newspaper in?

The Court: Apparently.

Mr. Saypol: If you will show it to me I won't insist on a foundation.

The Court: Why don't you do that?

Mr. Saypol: What do you want?

Mr. E. H. Bloch: May 24, 1950, just the photograph (indicating).

[fol. 1915] Mr. Saypol: Do you want to put that in?

Mr. E. H. Bloch: Yes.

Mr. Saypol: Is that all?

The Court: All right, you may step down.

(Witness excused.)

Mr. E. H. Bloch: I now offer in evidence a photograph of Harry Gold appearing in the May 24, 1950, late city edition of the New York Herald-Tribune, and I ask, your Honor, that the jury be permitted to look at this photograph before I ask permission of the Court to introduce in evidence a photostat; and the reason I say that is because the photostat is a little more blurred and I would like them to look at it. Now I understand from the Herald-Tribune this is part of their file and it is about the only newspaper of this kind that they have.

The Court: You both agree to substituting a photostatic copy?

Mr. Saypol: Oh, sure.

Mr. E. H. Bloch: Yes.

Mr. Saypol: Let me ask, what is the object of it, if you will tell me that. What do you want to show, it is a differ-

ent Harry Gold than the one who had appeared on the witness stand?

Mr. E. H. Bloch: No. My object, Mr. Saypol, is to demonstrate, or at least to prove the improbability of the story [fol. 1916] of the Greenglasses when they testified——

The Court: Oh, now, look, gentlemen, I don't want any of this any more.

Mr. E. H. Bloch: Well, he asked me, your Honor, and I wasn't going to make a statement.

The Court: There is much too much of this going on.

Mr. E. H. Bloch: I offer it in evidence.

Mr. Saypol: I don't conceive that I have done anything improper, if the Court please.

The Court: Very well. I do not want any purposes or any reasons. We will cover that in due time in summation or in the charge. Let us have it—show it to the jury and then we will put a photostatic copy in.

Mr. E. H. Bloch: Is that all right?

Mr. Saypol: That is agreeable to me.

(Marked Defendants' Exhibit H in evidence.)

Mr. E. H. Bloch: I will give you a photostat in one moment.

Would your Honor mind if the jury looks at this photograph (indicating), and would your Honor mind further if they compare this photograph with the exhibit that has already been introduced by the Government in evidence?

[fol. 1917] The Court: Go ahead.

(Mr. E. H. Bloch hands exhibit to the Jury.)

The Court: Have you got your next witness.

Mr. E. H. Bloch: Yes.

Is Mr. Kelly of R. H. Macy & Company here?

Thomas V. Kelly, called as a witness on behalf of defendants Rosenberg, being first duly sworn, testified as follows:

The Court: What is the exhibit they are comparing it with?

Mr. E. H. Bloch: The exhibit which was introduced by the Government.

The Court: Is that the picture taken by the FBI?

Mr. E. H. Bloch: I don't know by whom it was taken.

Mr. Harrington: 5.

Mr. E. H. Bloch: Government's Exhibit 5, but I mean the Court wants to know by whom it was taken.

I believe so, your Honor.

The Court: Well, if all you are doing is to show that one is a better picture than the other—

Mr. E. H. Bloch: No, that is not the reason.

The Court: I don't know why you are making a comparison, frankly. I think the Herald-Tribune should be [fol. 1918] shown, and that is all.

Mr. E. H. Bloch: I am willing to take the other one out.

The Court: All right, it has all been done; let it go.

Direct Examination

By Mr. E. H. Bloch:

Q. Mr. Kelly, are you an employee of R. H. Macy & Company?

A. I am.

Q. Are you an attorney?

A. I am.

Q. And are you employed as part of the legal division of R. H. Macy & Company?

A. I am.

Q. And have you responded hereon behalf of R. H. Macy & Company pursuant to a subpoena duces tecum that has been served on R. H. Macy & Company to produce a certain record concerning a sale and delivery of a console table to Julius Rosenberg of 10 Monroe Street in the years 1944 and 1945?

A. That's correct.

Q. And have you brought with you any record of that transaction?

A. I have not.

Q. Have you made an attempt or has any employee of R. H. Macy & Company made an attempt to find that record?

A. I endeavored to find them, yes.

Q. And will you explain to the Court and jury why you haven't produced that record in court now?

A. Well, the subpoena calls for records during the years [fol. 1919] 1944 and 1945 and the records for 1944 and 1945 have been destroyed.

Q. Is there any way—is there any record of R. H. Macy Company now which could enable R. H. Macy to find out about this particular alleged transaction?

A. My information is that there are no such records.

Q. Would you have such a record if the purchaser had a D.A. account.

A. D.A. or a C.T. account, yes. C.T.—cash time.

Q. Assuming that the purchaser had retained the order slip with the number on it, would R. H. Macy at this time have been able to locate a record of this transaction?

A. No.

Q. You say these records have been destroyed?

A. Yes.

Q. For those years?

A. That is correct.

Mr. E. H. Bloch: That is all.

The Court: May I ask you something, Mr. Kelly? When a man makes a cash purchase at R. H. Macy, is he required to find the check which the sales girl makes out?

The Witness: No, your Honor.

The Court: He is not required to sign at all, is he?

[fol. 1920] The Witness: No.

By Mr. Bloch:

Q. How about when a delivery is made?

The Court: You mean after it is delivered to his home?

Mr. E. H. Bloch: No, no.

The Court: Or at the time of purchase?

Mr. E. H. Bloch: Yes, that is right.

The Court: At the time of the purchase, if it is paid for by cash.

The Witness: I don't think a signature is required. I am not connected with the sales force. I am in the legal office but my understanding is that it is not required.

Q. You don't know?

The Court: He says it is not required.

Q. Well, it is very important for us. If you do not know, say so, and if you do know, say so; otherwise we might get somebody else from your organization who has knowledge of these facts.

A. Well, I would prefer that.

Q. Is it your testimony now that you don't know of your own knowledge?

A. From my own recollection, no.

Mr. E. H. Bloch: All right, that is all.

[fol. 1921] Cross Examination

By Mr. Saypol:

Q. Mr. Kelly, when you say that records have been destroyed, are you referring to the sales records?

A. The sales slips; they keep them for four years.

Q. By whom were deliveries made for R. H. Macy in 1944 and 1945?

A. In 1945 it was named — it was United Parcel; in 1944, it was Macy's.

Q. Are the delivery records retained, or have they, too, been destroyed?

A. No, the delivery records might be available.

Q. Was R. H. Macy paying a sales tax on retail sales made in 1944 and 1945?

A. They were.

[fol. 1922] Q. R. H. Macy made quarterly returns to New York City in respect to those sales?

A. I presume they did.

Q. Are those records still retained?

A. Yes, sir.

Q. Do you know anything about this situation in the furniture department in 1944 and 1945 in respect to available stocks of furniture?

A. None whatsoever.

Mr. Saypol: That is all.

Redirect Examination

By Mr. E. H. Bloch:

Q. You say that delivery records are in existence concerning transactions in 1944?

A. Yes, United Parcel records.

Q. Well, let us see, didn't you say the United Parcel Service took care of Macy's delivery in 1945?

A. That is my recollection.

Q. How about 1944?

A. That was by Macy itself then.

Q. Let us take the two years separately: Are there any delivery records of R. H. Macy in existence concerning sales on a cash basis where they are followed by delivery here in Manhattan for the year 1944?

A. That would be Macy's? No.

Q. But you say that there are records available with respect to any cash sales made at Macy's in 1945 where de- [fol. 1923] livery was made by United Parcel?

A. They may well have those records. I believe they do.

Q. And are those records which record the delivery by United Parcel in the possession of R. H. Macy & Company?

A. No, they are not.

Q. Whose possession are they?

A. United Parcel.

Q. Where are they located, please?

A. I don't know.

Q. Are they in Manhattan, do you know?

A. Yes, they are.

Mr. E. H. Bloch: Thank you.

The Court: May I see that Herald Tribune.

Mr. E. H. Bloch: It is May 24th, your Honor. I think there is a piece of paper in there (handing book to Court).

The Court: Has those documents come down so that we can complete this examination?

Mr. Norton: No, they haven't.

The Court: Did I understand you to say that this didn't resemble Harry Gold (indicating book)?

Mr. E. H. Bloch: No, on the contrary, my contention is that it resembles him very well. It is a very good picture of Harry Gold.

If the Court please, in connection with this last item I understand that the pictures are not here yet.

[fol. 1924] The Court: No, they are not.

Mr. E. H. Bloch: May I make a suggestion, your Honor, in order to expedite the trial that the defendant Ethel Rosenberg go on.

The Court: All right.

Mr. E. H. Bloch: Then we can recall him.

The Court: Interrupt her as soon as the pictures arrive.

Mr. E. H. Bloch: Yes.

Ethel Rosenberg, one of the defendants, called as a witness in her own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. A. Bloch:

Q. Are you married?

A. Yes.

Q. To whom?

A. Julius Rosenberg.

Q. The other defendant in this case?

A. That is right.

Q. One of the other defendants in this case?

A. That is right.

Q. And you are a defendant in this case?

A. Yes, I am.

Q. What was your maiden name?

A. Ethel Greenglass.

Q. When were you married?

A. June 18, 1939.

Q. By whom?

A. I believe it was Rabbi Zin.

[fol. 1925] Q. When and where were you born?

A. September 28, 1915.

Q. Where?

A. 64 Sheriff Street, New York.

Q. Is that the same house in which your mother still lives?

A. That is right.
Q. How many brothers and sisters have you?
A. I have three brothers; no sisters.
Q. What are the names of the three brothers?
A. David, Bernard and Sam.
Q. Who is the oldest?
A. Sam.
Q. Is he a full brother of yours?
A. No. He is a half brother.
Q. How? In what way?
A. The same father but not the same mother.
Q. Who comes next in age?
A. I do.
Q. I mean of the brothers?
A. Oh. Bernard.
Q. How old is Bernard?
A. Well, Bernard is two years two months and two days younger than I am. That would make him about 33.
Q. And David is the youngest in the family?
A. That is right.
Q. And you are how much older than David? Should I say about six years?
A. Yes, six or seven; something like that.
Q. Now, were you brought up with David in the same [fol. 1926] house.
A. That is right.
Q. Until what time?
A. Until I was married.
Q. And at the time of your marriage in 1939 David was how old?
A. He must have been——
Q. About 17?
A. About 17, yes. I was going to say about 17.
Q. And you were about 22 or 23?
A. I think I was 24: 23 or 24.
Q. Now, did you have any schooling?
A. Yes, I did.
Q. Will you kindly give the jury a brief sketch of your schooling and education?
A. Well, I attended public school 22. And then I attended Public School 12. That was called junior high school. Then

I attended Seward Park High School from which I was graduated in June 1931.

Q. At the age of about 17?

A. No, I wasn't 16 yet.

Q. What if any other educational institutions did you attend?

A. Well, I then took a short secretarial course at another public school for about six months. I received a certificate. That was covering subjects like bookkeeping and stenography and typing. And I didn't go to any kind of institution but I had a private Hebrew tutor who came to the house. I also had a private piano teacher from whom I took lessons for about two years.

[fol. 1927] Q. Did you also study voice?

A. Yes, I did.

Q. With whom?

A. The Carnegie Hall Studios.

Q. In connection with your voice studies did you attend any group of singers?

A. Yes, I did. I became the youngest member of the Schola Cantorum under the directorship of Hugh Ross.

Q. How long were you connected with that organization?

A. For a year.

Q. Anything else you studied?

A. Yes. When my child was about two and a half I think, my older child, I took a course with the New School for Social Research in child psychology. I also took a course in music for children at the Bank Street school in Greenwich Village, and then sometime in the spring of 1950 I took a course in guitar.

Q. Were these two courses, the one in child psychology and the other in music for children taken in order to equip and condition you to raise your child?

A. Yes, that really was the reason.

Q. How many children have you?

A. I have two children.

Q. What are their ages?

A. Well, Michael was eight March 10th.

Q. He is the older of the two?

A. That is right. And Robert will be four May 14th.

[fol. 1928] Q. At the time of the arrest of your husband, where did you live?

A. 10 Monroe Street, Manhattan.

Q. You lived there at the time of your arrest?

A. That is right.

Q. And when were you arrested?

A. August 12th.

Q. Where are your children now?

A. They are at a temporary shelter in the Bronx.

Q. Have you seen them since you were arrested?

A. No, I have not.

Q. Now, throughout the period in which you lived at 10 Monroe Street who was keeping the house?

A. I was.

Q. And when did you move into 10 Monroe Street?

A. It was the spring of 1941—no, 1942. The spring of 1942.

Q. 1942?

A. That is right.

Q. So you lived there approximately nine years?

A. That is right.

Q. And during all of this time did you do the housekeeping?

A. Yes, I did.

Q. Did you do all the chores of a housewife?

A. Yes, I did.

Q. Cooking, washing, cleaning, darning, scrubbing?

A. Yes, I did.

Q. Did you hire any help throughout that period?

[fol. 1929] A. On occasion for brief periods. I know that when I came from the hospital after the birth of the first child I had some help for the first month, and then upon the time that the second child arrived, I had help for about two months, and there was a period when I was ill and that started about November 1944, I had to have help, right up to about the spring of 1945.

Q. Now, outside of these three periods you last mentioned, you did all the housework yourself?

A. That is right.

Q. Your laundry and everything?

A. That is correct.

Q. How many rooms did you occupy there?

A. Three rooms. It is called a three and a half room apartment, but it is actually three rooms plus a bathroom.

Q. And immediately after your moving into that apartment how was it furnished?

A. Well, two friends of ours, Harry and Sylvia Steingart were due to go to California for some job he had gotten, and at the time we had no furniture and we had very little money to really furnish a house properly, and they said that it would serve a two-fold purpose if we took their furniture; they wouldn't have to pay for storage, and we would have the use of their furniture. So we did that.

[fol. 1930] Q. And did you at that time buy anything new to furnish the home?

A. No, not upon our leasing the apartment. We simply furnished it with what they had; nothing else.

Q. Now, were there amongst the household furniture that you borrowed from your friends two tables?

A. No. There were three tables.

Q. Will you tell us just what tables you had borrowed from these friends of yours?

A. There was a rather rickety bridge table and there was a maple leaf table which was a nice solid piece. Then we had a dark stained, I think it was some kind of walnut table. It was a gate leg in not too good condition even at that time.

Q. And did you since the time you moved to the Monroe Street apartment until the time of your husband's arrest and your arrest acquire any other tables?

A. Yes. We acquired a console table that my husband purchased at R. H. Macy. A very inexpensive table, with a back that you could—sometimes it would stand up, and other times if we wanted to use it for eating purposes, it folded down.

The Court: Were you with him when he purchased it?

The Witness: No, I was not.

[fol. 1931] By Mr. A. Bloch:

Q. Were you at home when it was delivered?

A. Yes, I was.

Q. And did you see who delivered it?
A. Just the usual delivery person.
Q. Of R. H. Macy?
A. That is right.
Q. And can you recollect the year during which that table was acquired and sent to your home and received in your home?
A. Well, it was somewhere between, somewhere either 1944 or 1945.

By the Court:

Q. Do you remember whether you signed for it when it came or did your husband sign for it?
A. Oh, I think I signed for it when it came. It came during the day and I was home.

By Mr. A. Bloch:

Q. Did you acquire any other furniture to replenish the furnishings at the home during that period in which you were living at Monroe Street?
A. Well, my husband was employed somewhere where there was a man who had had certain specifications made for a piece of furniture and somehow they hadn't made the furniture as he desired it and he asked my husband to please take it off his hands, and we got that piece of furniture at the cost of delivery. It was what you call a breakfront. It [fol. 1932] has a black and white book case that fits onto a chest of drawers.
Q. Anything else that you bought or acquired during that period of nine years?
A. Well, we did get a second-hand piano, rather battered, for a very small cost from a neighbor in Knickerbocker Village. We also got a couple of children's chests, and I think four rush-bottom chairs also from a neighbor in Knickerbocker Village.
Q. Now, the secondhand furniture that you got at the time of your marriage or immediately afterwards: Were those pieces of furniture still in your apartment at the time of your arrest?
A. Well, the piano was and the two children's chests. I think two of the chairs had deteriorated and had been thrown

away. I think I had two left of those four, and the console table was in the house.

Q. Now, do you remember what you paid for the apartment when you first moved in?

A. I believe it was $41; $41.75.

Q. Did you say $40.75?

The Court: $41.

The Witness: $41, I think it was.

Q. And your rental was increased—

A. No; $45. That is right, $45.

[fol. 1933] Q. Was the rental increased from time to time until the present rental that was paid for June or July?

A. What was that?

Q. Was the rental raised from time to time until the last rental that was paid for June or July?

A. At the last it was $51.25.

Q. You had a telephone in the house?

A. Yes, we did.

Q. And you had electric current?

A. Yes.

Q. And gas?

A. That is right.

Q. Do you remember what the average bills for current and gas were per month?

A. Well, the electricity bill came with the rent bill. The corporation had some kind of arrangement.

Q. It was included in the rent?

A. That is right.

Q. How about your gas?

A. The gas bill was very small. I don't think it exceeded more than $2 a month.

Q. Have you any idea what the telephone rates were, the bills per month were?

A. Well, approximately the telephone bill ranged, oh, somewhere between $5 and perhaps $7 a month.

By the Court:

Q. Did your husband do any other shopping by himself for furniture on any other occasion?

A. He did buy something else. At the time I believe he [fol. 1934] bought a table.

Q. At the same time?

A. Yes.

Q. Was another piece of furniture purchased then?

A. I believe it was about the same time.

Q. What was that piece?

A. I am not sure.

By Mr. A. Bloch:

Q. If I should suggest a lamp, would that refresh your recollection?

A. It might have been. I remember there was some other item, but I couldn't——

Mr. Saypol: Well, I object to the suggestion. He might as well suggest a refrigerator.

The Court: All right. We will take it as a suggestion and the jury will understand where it came from.

By the Court:

Q. Let me ask you this.

A. Yes.

Q. Did you know that he was boing to make that purchase when he did make it?

A. Oh, yes, we had decided that we really needed a decent piece of furniture, at least a table, and so we did decide to make that expenditure.

Q. As far as you know, how much was that expenditure?

A. It was about $20 or $21. I remember that.

Q. Was there any sale on at the time.

A. Yes. He came home and told me he really made a good [fol. 1934a] buy; that it was——

Q. Did you know in advance? Was there something advertised in the paper? Was there a sale at Macy's?

A. I couldn't say. I really couldn't recall at this time whether I had noticed a sale or not. We had just decided we needed a table and he stopped in to Macy's and found a buy.

Mr. A. Bloch: Raise your voice, please.

The Witness: Yes.

[fol. 1935] By Mr. A. Bloch:

Q. What became of the other three tables, the ones you acquired at or about the time of your marriage?

A. Well, the bridge table was stored in the closet; after it got so rickety that we felt we just couldn't eat on it any longer, we kept it in one of the closets; and the maple leaf table was one of the pieces we sent back to Mr. and Mrs. Steingart in California.

Q. Was that a fairly good table?

A. Yes, that is right.

Q. What became of the other?

A. Well, the gateleg table was used in the kitchen and used in the living room, and finally I decided after the birth of the second child, when we were just too crowded between two children and two adults and all the paraphernalia, that we might just as well get rid of it. It was pretty well broken up by then anyway.

So I got rid of it, and a couple of other very old pieces. I sold those items to a second-hand furniture dealer, and I got all of $5 for all three items.

Q. Now, did you throughout the time you lived at Monroe Street have a typewriter in your house?

A. Yes, I did.

Q. When did you acquire that typewriter?

A. I must have been about eighteen years old. I was a [fol. 1936] member of the Clark House Dramatic Group, and one of the actors in that group had the typewriter and wanted very badly to get rid of it. So he sold it to me for $30 and I had it ever since.

Q. When you were eighteen years old?

A. That is right.

Q. Was this the same typewriter you had at 10 Monroe Street?

A. That is the same one.

Q. And was this the same typewriter you had until the summer of 1950?

A. That is right.

Q. And was this the same typewriter that was taken possession of by the FBI?

A. That is right.

Q. And is now in their possession?

A. That is correct.

Q. Now, when did you meet Julius?

A. I met him in the winter of 1936.

Q. Do you recall what he was doing at that time?

A. He was attending City College.

Q. Do you know how long he continued at that college?

A. Oh, until his graduation in, I believe it was, the spring or the end of the winter of 1939.

Q. Did you while he was attending college do any typing for him?

A. Yes, I did.

Q. That was before your marriage?

A. That is right. I knew him for two and a half years [fol. 1937] and I typed all the time.

Q. For him?

A. That is right. His engineering reports. That is right.

Q. Now, after your marriage to Julius, did you do any typing for him?

A. Yes, I did some.

Q. And what was the nature of the context of the matters that you typed for him?

A. Well, there were business letters. I remember when they were—when he was part of the United Purchasers and Distributors, I used to type up all the bids for various Government surplus material, and I also remember typing his letters in regard to reinstatement after he was dismissed by the Government.

Q. Did you at any time type any letters or communications embodying anything pertaining to the national defense?

A. No, I did not.

Q. Did you at any time type any matters that may be called information concerning anything relating to our national defense?

A. No, I did not.

[fol. 1938] By the Court:

Q. Did you know anything about the charges that had been leveled against your husband by the Government in '45?

A. There were no charges leveled against him by the Government in '45.

Q. What was that situation about? You say you did some typing for him in connection with——

A. Oh, you mean the time that the Government dismissed him?

Q. Yes.

A. Well, it was alleged that he was a member of the Communist Party.

Q. And he was dismissed for that reason?

A. I refuse to answer on the ground that this might be incriminating.

Q. No, no, no. I say, the Government dismissed him for that reason? I am not asking you whether he was. I am asking you whether the Government gave that as a reason for his dismissal.

Mr. A. Bloch: May I advise the witness to answer that question.

A. Well, they gave that as a reason, that is right.

Q. Now, you typed the reply for him; is that right?

A. Yes.

By Mr. A. Bloch:

Q. And subsequent to the——

The Court: Excuse me, Mr. Bloch. I am not finished.

[fol. 1939] Mr. A. Bloch: I beg your perdon.

By the Court:

Q. And the reply which you typed denied that he was a Communist; is that correct?

A. I refuse to answer on the ground that this might be self-incriminating.

Mr. A. Bloch: I advise you to answer.

The Court: May we have the answer? Your lawyer says——

A. Yes.

Q. Do you understand my question?

A. Would you please repeat it?

The Court: Will you read that back, please.
Q. (Question read.)
A. That is correct.
Q. And was that true?

Mr. A. Bloch: I object to it.
The Court: Upon what ground?
Mr. A. Bloch: Upon the same ground urged by my son, when that question was asked of the defendant Julius Rosenberg.
The Court: Well, no, I think then there was a privilege asserted, Mr. Bloch. There was a privilege asserted.
Mr. Saypol: That is why I arose, if the Court please.
[fol. 1940] The Court: It was not an objection.
Mr. E. H. Bloch: May I say something? Pardon me, may I say something? I would like to preserve the record, your Honor. You see, I objected to it on a legal ground, and you overruled me.
The Court: You objected that it wasn't relevant.
Mr. E. H. Bloch: That is correct.
The Court: I overruled it on that basis. If that is your objection, I will overrule it on that basis, too.
Now we have the question of privilege.
Mr. Saypol: She hasn't asserted it, if the Court please.
The Court: I know she hasn't.
Do you want to hear my question read back?
The Witness: Yes.
The Court: Will you read the question, please.

Q. (Question read.)

A. Was *w*hat true?
Q. The statements which you typed, that he is not a Communist?
A. Again, I refuse to answer on the ground of self-incrimination.
The Court: All right.

Mr. Saypol: I suggest that the witness has no privilege.
[fol. 1941] The Court: The witness has a privilege if it would incriminate her.
Mr. Saypol: She is asked about the answer that her husband gave.

The Court: Well, she was a party; she had typed it and she may feel that her typing might in some way incriminate her.

Mr. Saypol: The Court then overrules my request? I want the record to show that I didn't abandon the position that I take.

The Court: Well, as I understand your position, you are not pressing any of these questions where the witnesses assert their privilege.

Mr. Saypol: On the Court's observation I will not press it.

The Court: Yes.

By Mr. A. Bloch:

Q. Now, we will go back to the time that you had finished your course in a business school. What, if any, employment did you get?

A. Well, I was employed as a clerk by the National New York Shipping and Packing Company.

Q. For how long?

A. Oh, somewhere about three years, perhaps not quite three years.

Q. Was it a full-time job or a part-time job?

[fol. 1942] A. Well, it varied from time to time. Sometimes it was a part-time job; sometimes it was full-time; sometimes it was full-time with a lot of overtime.

Q. During that period of three years, were you employed part time by any other firm?

A. Well, I wasn't employed by a firm, but I did do professional singing during that period.

Q. After you left the employ of the firm you just now mentioned, the National, where did you work, or what employment did you get?

A. Well, I worked at the Bell Textile Company, for whom I had previously worked, also, from time to time, on and off, on a part time basis, and now I was employed full-time by the Bell Textile Company.

Q. How long did you continue in their employ?

A. Until the end of May 1940, when I left.

[fol. 1943] Q. That was about a year after you were married?

A. That's right.

Q. During the time you worked in those two places mentioned and at the time you did singing, what if anything did you do with your income and your earnings prior to your marriage?

A. Except for carfares and lunches, it was turned into the family.

Q. Now, were you at any time during that period a member of the Henry Street Settlement?

A. Yes, I was.

Q. What sort of an organization was that?

A. That was a dramatic group. I also had a scholarship there, to take dramatic courses and modern dancing, which I did.

Q. After your marriage and before the birth of your first child, what if anything did you do with your spare time?

A. What time was that, again?

The Court: After your marriage.

Q. After your marriage and prior to the birth of your first child, what if anything did you do with your spare time?

A. Well, I was a member of the Ladies Auxiliary of the Federation of Architects and Engineers, which was my husband's union, and I did a lot of typing for them; and I also was the secretary at the East Side Defense Council, which [fol. 1944] was the neighborhood branch of the official Civilian Defense Organization, Volunteers Organization, C. D. V. O., at Park Avenue, and that entailed a lot of typing and various other activities at the Civilian Defense.

Q. Did you take some of that typing home with you, or the matter which you typed, home with you?

A. Sometimes I did, yes.

Q. Were you also a member of any union during that period of time when you were employed?

A. Yes, when I worked

Q. What union did you belong to?

A. Well, when I worked at National Packing, I was a member of a shipping clerks union, which was seeking to affiliate with the International Ladies Garment Workers' Union, and when I worked at the Bell Textile Company, I was a member of Local 65 of the United Wholesale and Retail.

Q. Were you active in the union?
A. Yes, I was.
Q. Did you do any typing for the union?
A. No, I didn't do any typing for them.

Mr. A. Bloch: I wonder if I should go into the main part of my direct examination this afternoon.

The Court: Let us complete the Rosenberg phase of it.

[fol. 1945] Mr. A. Bloch: I thought I had reached the end of a topic.

The Court: We can complete the examination then of Mr. Rosenberg.

Will you step down, please?

(Witness temporarily excused.)

Julius Rosenberg resumed the stand.

Mr. Saypol: May the record show that the photographs that Mr. Bloch requested have been delivered to him.

The Court: Yes.

Mr. Saypol: That is, those that were taken from the home of the Rosenbergs at the time of the arrest.

Mr. E. H. Bloch: May I suggest to the clerk that all of this be marked as one exhibit, I mean for identification. Will you mark, please, all of this as one exhibit. We will put it in an envelope.

The Court: Mark the envelope.

Mr. E. H. Bloch: Mark it just "Assorted Photographs."

(Marked Defendants' Exhibit 1 for identification.)

Redirect Examination (Continued)

By Mr. E. H. Bloch:

Q. I show you a number of pictures, all of which have been taken together and marked Defendants' Exhibit 1 for identification, and ask you, Mr. Rosenberg, whether you can [fol. 1946] recognize those pictures (handing to witness)?
A. Yes, I do.

Mr. Saypol: Have you looked at all of them?

The Witness: No, they are some of the pictures that were in my house at the time the FBI came.

The Court: All of the pictures you identify there as having been in your home?

The Witness: Do you want me to look through all of them?

The Court: Well, look through all you find necessary to identify as being in your home.

Is there any question about that?

Mr. Saypol: I didn't want the state of the record to be that he identified each of them. If he is testifying that he recognizes a batch as the batch that was taken, then the record is clear.

Mr. E. H. Bloch: That is the only question I have to ask of this witness, and I now ask that these photographs be offered in evidence.

Mr. Saypol: That I would object to.

The Court: I will sustain that objection, offering old pictures. We are not interested in seeing a lot of photographs of people that might have nothing to do with the case.

Mr. E. H. Bloch: Well, except that there are certain [fol. 1947] questions asked by Mr. Saypol on cross-examination with respect to the taking of certain photographs.

The Court: Yes, I want to ask one question.

Mr. Saypol: I will ask him one question on recross, when I get there.

The Court: Are you finished?

Mr. E. H. Bloch: I am finished.

Recross Examination

By Mr. Saypol:

Q. Are the photographs in that batch, which you took May, 1950 at 99 Park Row, which I described as passport photographs?

A. There are a lot of photographs that aren't here, that we have taken.

The Court: Well, he is asking you whether those photographs are there, those that you took in May or June?

The Witness: No, I don't see any photographs that I took.

The Court: In May or June, 1950?

The Witness: That's right.

Q. Are the photographs there that David Greenglass says he took for passport photographs, that he says he gave to you?

A. I don't notice any photographs there.

Mr. Saypol: That is all—one question, if I may ask it.

The Court: Pardon?

Mr. Saypol: One question if I may ask it?

[fol. 1948] Q. Is or was your wife a member of the Communist Party?

A. I refuse to answer on the ground it might tend to incriminate me.

Mr. Saypol: Very well, I don't intend to press it.

The Court: Wait a minute. You are not going to press for an answer?

Mr. Saypol: No, I don't think so.

The Court: You may step down.

(Witness excused.)

The Court: (To the jury). I want you to make your arrangements accordingly. There is every indication now that this case might go to you sometime Wednesday afternoon, so I would make my plans accordingly. The chances are, you might be here a little beyond the regular hours at night, because I might charge you sometime during the course of the afternoon, so that you might tell the respective members of your family that you might be delayed.

We will recess until 10:30 tomorrow morning.

(Adjourned to March 27, 1951, at 10:30 a.m.)

[fol. 1949] New York, March 27, 1951,
10.30 o'clock a.m.

Trial resumed

ETHEL ROSENBERG, resumed the stand;

Mr. E. H. Bloch: May I address the Court?

The Court: Yes.

Mr. E. H. Bloch: You will recollect that Mr. Kelly of R. H. Macy Company was a witness yesterday, and by reason of telephone conversation that he made to me, and I understand, also, to Mr. Saypol, he indicated an interest in coming back here this morning to testify on one minor matter, and I was wondering whether the Court, in view of the fact that he is a busy man, would permit him to go on now just for about a moment? I think it will take two or three questions and we will be through with him.

Mr. Saypol: I think Mr. Bloch can state the fact for the record and we don't have to go through the procedure.

The Court: Yes, why don't you do that? Then you can both agree.

Mr. E. H. Bloch: Well, you check me Mr. Saypol. I [fol. 1950] don't know what Mr. Kelly said to you, but Mr. Kelly testified yesterday——

The Court: Well now, I will tell you what we ought to do; Why don't you write it out, if it is very short, write it out, give it to Mr. Saypol before the morning is over or before the recess, just write it out and give it to Mr. Saypol and go over it. Then you will read it into the record.

Mr. E. H. Bloch: I just want to make sure, if there is any controversy, Mr. Kelly won't be——

The Court: Don't tell us what he testified to. What are you going to add now to the testimony?

Mr. E. H. Bloch: All what we are going to add, your Honor—I think we can take care of this in two minutes—is that in 1944 Macy's had their own delivery service, and as a consequence of his investigations, as he testified yesterday, those records are not available any more. He testified that in '45 they had the United Parcel Service. He now states that in 1945 Macy's also had their own delivery

service and that they are not available. That is his entire change of testimony.

The Court: All right.

Mr. Saypol: Perfectly satisfactory.

The Court: Well, do you agree, if he were recalled to the stand, he would so testify?

[fol. 1951] Mr. E. H. Bloch: So testify, and I wonder whether the Court will tell Mr. Kelly that he no longer has to stay here?

Mr. Saypol: In order to save time, in order to avoid a direct question, or rather, cross examination, I will make a statement to ascertain from Mr. Kelly it is the fact and that will save putting him on, and that is that anybody can walk into R. H. Macy now and make inquiry of the facts testified to by Mr. Kelly, and assert that those records are non-existent for the years '44 and '45.

Mr. E. H. Bloch: I don't understand the import of the statement, but inquiries were made by the defense and R. H. Macy was subpoenaed.

Mr. Saypol: Is that acceptable, though?

Mr. E. H. Bloch: Yes, sure.

The Court: All right.

Mr. A. Bloch: May I proceed?

The Court: Proceed.

Direct examination continued.

By Mr. A. Bloch:

Q. Mrs. Rosenberg, I call your attention to the testimony given by your sister-in-law, Ruth, that on an occasion in November, 1944, when she was about to visit her husband at Albuquerque, she had a conference at your home, and at that conference you and your husband per-

[fol. 1952] suaded her against her will or inclination to enlist her husband in espionage work, and I ask you whether on that occasion or any other occasion you persuaded or attempted to persuade your sister-in-law to enlist her husband in espionage work?

A. I did not.

Q. Your sister-in-law testified that this conference or conversation was prefaced by a remark made by your husband, Julius, that she, your sister-in-law, might have noticed

that for some time he and you had not been actively been pursuing the Communist party activities, that you didn't buy the Daily Worker at the usual newsstand, and that for two years your husband had been trying to get in touch with people who would assist him to be able to help the Russian people more directly, other than just his membership in the Communist Party; was there ever any such conversation at any conference at which you were present?

A. No, there was not.

Mr. Saypol: What page?

Mr. A. Bloch: Page 972.

[fol. 1953] Q. She further testified that your husband kept on and told her that he knew that David was working on the Atomic bomb and that she asked him how he knew. Did any such conversation occur or did you ever hear any such conversation?

A. No, I did not.

Q. Did you ever participate in any such conversation?

A. No, certainly not.

By the Court:

Q. Did you know that your brother was working on the atomic bomb project?

A. No.

Q. When did you find out about that for the first time?

A. Oh, when he came out of the Army.

Q. You mean in 1946?

A. Yes.

Q. Did you know that he was working on a secret project while he was in the Army?

A. Well, he told us that when he came in on furlough.

Q. When?

A. At my mother's house.

Q. In January 1945 or in November 1944?

A. I don't know the exact date of the furlough, but the first time.

Mr. A. Bloch: May I ask you to keep your voice up, please?

The Witness: Yes, I am sorry.

Q. Did he say what that secret project was?

A. No, he did not.

[fol. 1954] By Mr. A. Bloch:

Q. She further testified, and when I say "she" I mean your sister-in-law, that she had received an affidavit from the War Department telling her that her mail to David would be censored and that his mail to her would be censored because he was working on a top secret project.

Was any such talk ever had at that conference on that occasion or any other occasion?

A. No, no such talk.

Q. She further testified, page 973, that your husband said that his friends had told him that David was working on the atomic bomb, that the atomic bomb was the most destructive weapon used so far, that it had dangerous radiation effects, that the United States and Britain were working on this project jointly, and that he felt that the information should be shared with Russia who was our ally at the time, because if all nations had the information, then one nation couldn't use the bomb as a threat against another. Did you ever overhear any such conversation?

A. No.

Q. At any time in any place?

A. No, I did not.

By the Court:

Q. Well, what were your own views about the subject [fol. 1955] matter of the United States having any weapon that Russia didn't have at that time? That is, in 1944 and 1945?

Mr. A. Bloch: May I respectfully object to your question?

The Court: Yes. Objection overruled.

Mr. A. Bloch: As incompetent, irrelevant and immaterial.

The Court: It is most relevant. It goes to the matter of the state of mind, and intention has to be established in this case.

Mr. A. Bloch: I except.

(Last question read at the request of the Court.)

The Witness: I don't recall having any views at all about it.

Q. Your mind was a blank on the subject?

A. Absolutely.

Q. There were never any discussions about it at all?

A. Not about that, not about the weapon.

Q. Was there any discussion at all as to any advantages which the United States had to make warfare that the Russians didn't have?

A. No, nothing of that sort.

Q. You never heard any discussions that there should be some equalization between Russia and the United States?

A. No, sir.

[fol. 1956] By A. Bloch:

Q. Your sister-in-law further testified that at first she objected to proposing what you proposed to her husband and that she didn't think it was right and that then she decided to give her husband a message and that your husband told her the things he wanted her to ask her husband to get the information that he wanted to bring back, he wanted your sister-in-law to bring back.

Were you ever present at any such conversation?

A. No, I was not.

Q. Did you ever participate in any such conversation or any such conference at which these things were discussed?

A. No, I did not.

Q. Your sister-in-law further testified that he said on that occasion that he wanted a physical description of the project at Los Alamos, that he wanted the approximate number of people employed, the names of some of the scientists who were working there, something about whether the place was camouflaged, what the security measures were, and the relative distance of the project from Albuquerque and Santa Fe and that when she got the information she was not to write it down or make a memorandum of it, but to memorize it.

Were you ever present at any conversation in which what I have just now read was discussed or mentioned?

[fol. 1957] A. No, I was not.

Q. Or argued about?

A. No.

Q. Did you ever talk to your sister-in-law either in the

presence of your husband or in his absence about anything that was transpiring at Los Alamos or in any part of New Mexico or in any factory or Government project?

A. No.

Q. Referring to or discussing information to be obtained to be transmitted either to your husband or to any of his emissaries?

A. No, sir.

Q. Now, do you recall the time when your brother Dave came on his first furlough?

A. Yes.

Q. The date has been mentioned here as sometime in January 1945, and her testimony is that on that occasion when he came, page 985, she testified in substance and your Brother Dave testified in substance, that they came on that occasion to your home for dinner and that there was present there a woman named Ann Sidorovich, and on that occasion there was some light talk in the presence of Ann Sidorovich, and Ann Sidorovich left the apartment, and that upon her leaving your home your husband said that he had invited Ann Sidorovich to your home so that the Greenglasses would be able to recognize her and know her when she would come to procure information concerning the Los Alamos Project at some future date, and that [fol. 1958] Ann Sidorovich would come to meet your sister-in-law in a theatre in Denver, where Ann Sidorovich and your sister-in-law would exchange purses, and your sister-in-law's purse would have in it written information that David would give concerning the Los Alamos Project.

Was there any such talk had at any time in your presence?

A. No.

Q. Do you remember the occasion when your brother and sister-in-law came to your home for dinner during his first furlough?

A. Yes, I do remember that.

Q. Do you recall whether on that occasion Ann Sidorovich was present in your home?

A. She may or may not have been. I really don't recall that.

Q. Now, how long had you known Ann Sidorovich?

A. Well, they had moved into Knickerbocker Village

a few months after we did and we became neighbors. We moved in in the spring of 1943 and they moved in later in 1943.

Q. How long did they live in that house?

A. About a year.

Q. Are you sure it was in 1943 you moved into that apartment?

A. No, no. I gave birth to my first child in 1943. It was 1942. 1942.

Q. Was that the year in which Ann Sidorovich moved [fol. 1959] into one of the apartments in the same building?

A. Yes, that is the year, 1942.

Q. And who lived there first? You or the Sidoroviches?

A. We did.

Q. For how many months, if you can recall?

A. I can't recall exactly how many months.

Q. And how long did the Sidoroviches live in that house?

A. About a year.

Q. And then they moved?

A. Yes.

Q. Where did you meet Ann Sidorovich? How did you come to meet her?

A. Well, I had met her husband at the Federation of Architects and Engineers, and once I was walking down to the East Side defense counsel and I ran into her husband on the street and he had a young lady with him whom he introduced to me as his wife Ann.

Q. Now, after the Sidoroviches moved away from this Knickerbocker Village house did you visit them, the Sidoroviches, or did they visit you?

A. Both.

Q. And you kept on the friendship that had been formed while they were your neighbors?

A. That is right.

Q. And of course, you knew that Michael Sidorovich, the husband of Ann Sidorovich—is that his name, Michael?

A. That is right.

Q. —had been a classmate of your husband's?

A. Yes.

[fol. 1960] Q. Now, you say you don't recall whether or not on the occasion of your brother's and sister-in-law's

visit to you in January 1945 Ann Sidorovich was or was not there?

A. No, I couldn't say.

Q. Now, your sister-in-law testified that your husband suggested a tentative plan and a possible meeting at Albuquerque instead of Denver, and that it was then decided to meet in a specific Safeway store. Was any such arrangement or suggestion made by your husband in your presence at any time?

A. No, it was not.

Q. Either on the occasion in January 1945 or on any other occasion?

A. No, it was not.

[fol. 1961] Q. Did your husband on that occasion or any other occasion say, in words or in substance, that either Ann Sidorovich or someone else would be one to come to Albuquerque to meet your sister-in-law?

A. No, he did not.

Q. Was there any such conversation had in your presence as to making plans or tentative plans to have somebody sent by your husband or by you to meet someone else, either in Albuquerque or in Denver, or anywhere else, in order to exchange information or procure information to be transmitted to your husband or some emissary of your husband?

A. There were never any plans.

Q. Your sister-in-law further testified that in order to arrange for an alternative plan or effectuation of this plan of exchanging and getting information, you, your husband and your sister-in-law went into the kitchen of your apartment, and that your husband took the side of a Jello box and cuit it in an odd fashion and he gave your sister-in-law one-half and he said, "This half will be brought to you by another party and he will bear the greetings from me and you will know that I have sent him"; was there any such thing?

A. No such thing ever happened.

Q. Did any such thing ever happen?

A. No, it did not.

[fol. 1962] Q. Did you ever hear of any such thing as a Jello box being cut in two in order to be a means of identification of any emissary or agent to be sent by your

husband out West in order to get information from the Los Alamos project?

A. Outside of this courtroom, I never heard of any such thing.

The Court: Incidentally, did you have any Jello boxes in your apartment?

The Witness: Oh, yes.

Q. Your sister-in-law had testified that she remembers that Julius, your husband, said on that occasion that this idea of the Jello box means of identification was a simple thing and that the simplest things are always clever; did your husband say that at any time in your presence?

A. No, he did not.

Q. Were you ever told by anyone that your husband made that remark?

A. No.

Q. Were you ever told by anyone that there was such a thing as a Jello box cut in two and split up, one retained by your husband and the other given to your sister-in-law as a means of identification of somebody who was to come as an emissary of your husband to procure information concerning the Los Alamos project?

A. I was never told of any such thing.

[fol. 1963] Q. Your sister-in-law further testified that on that occasion she overhead Dave and Julius talk about how the bomb was detonated; did you ever hear any such conversation between Dave and your husband, at any time?

A. I certainly did not.

Q. In January, 1945, or at any other time?

A. No, I did not.

Q. It was further testified to by your sister-in-law that a day before that visit for dinner, or the morning of the day on which the visit was made, information had been given to your husband by Dave in writing; were you ever told that any such information was given to your husband?

A. No, sir.

Q. And that on that evening, upon the occasion of the visit, somebody said——

Mr. A. Bloch: Page 990.

Q. —"Ethel"——

Mr. A. Bloch: I withdraw that.

Q. Your sister-in-law testified that on that occasion you said that you were very tired and that she asked you what you had been doing and that you said you had been typing, and that she asked you if she had found David's notes, containing the information about the atomic bomb and the project at Los Alamos, hard to distinguish; did you ever at that time, on that occasion or any other occa- [fol. 1964] sion, tell your sister-in-law or anyone else that you had been typing information concerning the atomic bomb or any other thing with respect to the Los Alamos project?

A. No, I never did.

Q. Did you ever type any such information?

A. No, I never did.

Q. Or copy any writing that was purported—that had been made by your brother, in which information concerning the atomic bomb was alluded to?

A. I never did.

Q. She further said that upon her inquiring of you why you were tired and upon your giving her the information that you were tired, because you were kept busy typing and copying, that you said that you were used to your brother's handwriting and that you could easily copy it; did that thing ever occur?

A. No, it never did.

Q. Did you on that occasion or any other occasion tell your sister-in-law that Julie, referring to your husband, was tired; that he was very busy; that he ran around a great deal; that all his time and energies were used in this thing, referring to transmission of information; that that was the most important thing to him; that he was away a good deal and spent time with his friends; that he had to make a good impression; that it sometimes cost him as much as $50. to $75. an evening to entertain his friends; [fol. 1965] did you ever say anything like that, either in words or in substance, to your sister-in-law or anyone else?

A. No, I never did.

Q. She further testified that on that occasion she said that she expected to be very lonely in Albuquerque and that

you said to her that she would make friends, that after a while she would probably meet other people there from New York, insinuating that those people would be people sent by your husband to get information; did you ever say anything like that to her, in words or in substance?

A. No, sir; I did not.

Q. She further testified that she, your sister-in-law, said on that occasion that she was worried; that she just lost her job and she didn't know how she was going to manage to live until David should find a place for her to live in Albuquerque; that Julius then said not to worry about that, that he would take care of her expenses; that the money was no object; that the most important thing was for her to go to Albuquerque to live, in order to get the information; did you ever participate in any such talk?

A. No, I did not.

Q. Did you ever hear your husband say anything to that effect?

A. No, I never heard him.

Q. She further testified, in general, that throughout that evening your husband tried to induce your sister-in-law [fol. 1966] to go to Albuquerque and live with her husband there in order to procure the information; did you get my question?

A. Yes. He did not.

Q. Now, going back to November, 1944, your sister-in-law testified that either you or your husband, I don't remember which, she said, gave her $150; did you ever give her $150?

A. No, I never did.

Q. Did your husband ever give her $150, in your presence?

A. No, he did not.

Q. Did your husband ever tell you that he had given her $150?

A. No.

Q. Did your sister-in-law or your brother ever tell you that he had received or that his wife had received $150?

A. No.

Q. Did you or your husband on that occasion or on any other occasion try to induce your sister-in-law to go out and live with her husband in Albuquerque?

A. No, I never did.

Q. As a matter of fact, you know that on a prior occasion, when your brother Dave was stationed at another post, your sister in-law had lived with him at that post?

A. Yes, I knew that.

Q. And that was in California?

A. That's right.

Q. And that she had been out there with him for about three months?

A. Yes, she was out there with him for some time.

[fol. 1967] Q. And that was long before November, 1944?

A. Oh, yes.

Q. Now, your sister in-law testified, in substance, that she had a miscarriage some time after she had been living with her husband in Albuquerque, and that she had written you a letter in which she informed you of the fact that she had had a miscarriage, and that thereupon she received a response from you in the shape of a letter, in writing, in which you said, in substance, that soon a relative will come to visit her, and insinuated that that was a sort of a signal, or that the word "relative" had some meaning, transmitting to her the idea that somebody was going to come to see her and receive information; did you ever write a letter containing a phrase that a relative would come to see her?

A. No, I did not.

Q. Did you ever make an arrangement with her or anybody else, or did your husband, in your presence, ever make an arrangement with her or anybody else that if the phrase "relative" would be used in any letter, it would mean as an identifying mark, and that it would refer to somebody, an emissary of your or your husband's coming over to get information?

A. There was never any such talk.

A. There was never any such arrangement.

[fol. 1968] Q. You corresponded with your sister in law during the time that she was living with her husband at Albuquerque?

A. Yes, I wrote her occasionally.

Q. Do you know how long she lived there with her husband? The testimony is, she went there about the end

of February or the beginning of March, 1945, and stayed there for approximately a year or so; is that correct?

A. Yes, that is correct.

Q. And during that time did you communicate with her?

A. Yes, occasionally.

Q. Did you also communicate with your brother?

A. Yes, I did.

Q. Now, your brother, Dave, was the youngest in the family?

A. That's right.

Q. And you were six years older than he was; and what was the relationship between him and you throughout the period of your living together in the same household, until you married and after you married?

A. Well, he was my baby brother.

Q. Did you treat him as such?

A. Yes, that is exactly how I treated him.

Q. Did you love him?

A. Yes, I loved him very much.

By the Court:

Q. Did he sort of look up to you?

A. Yes.

[fol. 1969] Q. And your husband? Before the arguments that were discussed here in court?

A. He liked us both. He liked my husband.

Q. Sort of hero worship?

A. Oh, by no stretch of the imagination could you say that was hero worship.

Q. You heard him so testify, did you not?

A. Yes, I did.

By Mr. A. Bloch:

Q. And it is not correct, is it, that there was any hero worship there between Julius and your brother or your brother and Julius?

A. It certainly is not correct.

Q. No. And when your brother went into the Army in 1943, you corresponded with him?

A. Yes.

Q. And you also corresponded on behalf of your mother?

A. Yes, I did.

Q. Your mother can't write English very well, can she?

A. No, she can just about sign her name.

Q. So you were sort of a secretary on behalf of your mother?

A. Of both my mothers, yes.

Q. And when your sister-in-law went to live with her husband, your brother, you continued writing to her?

A. Yes, I did.

Q. Now, can you give us an idea of what you wrote about when you did write to your brother and to your sister-in-[fol. 1970] law?

A. Well, I wrote the usual "How are you? We are all right"; and "Take care of yourself"; and "This one had a baby," or "the other one got married," and things of that sort.

Q. Did you ever, in any letter written to your brother or to your sister-in-law, refer to any matter pertaining to information concerning either the atomic bomb or any other instrument manufactured or used for national defense?

A. You mean, was there any such correspondence?

Q. Did you ever write in any letter the substance of what I just now said?

A. Oh, no; no, I never did.

Q. Tell me, did you ever know a man by the name of Yakovlev?

A. No, I never did.

Q. Did you ever know a man by the name of Golos?

A. No, sir; I never did.

Q. Did you ever know a woman named Bentley, who was on the stand here?

A. No, I never did.

Q. Did you ever hear of those people at any time before this case broke?

A. I read about them in the newspapers.

Q. Did you know a man by the name of Harry Gold?

A. No, I did not.

Q. Did you know a man by the name of Fuchs, Dr. Fuchs?

A. Not until I saw his name in the newspaper.

[fol. 1971] Q. And the same thing with Gold, you never knew of him until you read about it in the newspapers?

A. That is right.

Q. Did you ever know anybody who was referred——

Mr. Saypol: Will you be good enough, Mr. Bloch—will the Court direct counsel fix the date when she read about these things in the newspapers?

Mr. A. Bloch: Wouldn't that be a subject of cross examination, your Honor?

The Court: All right, go ahead.

Mr. A. Bloch: Will you, Mr. Reporter, kindly repeat that question?

(Question read.)

Q. (Continuing) —referred to as a Russian?

A. No.

[fol. 1972] Q. Did you ever know any Russian at all?

A. No, I never did.

By the Court:

Q. You didn't know any Russian?

A. No, I didn't know any Russian.

By Mr. A. Bloch:

Q. Did your husband ever introduce you to somebody who was Russian?

A. Not that I know of.

The Court: Well, I think her husband said he didn't know any Russians either.

Q. Did your husband ever mention to you the fact that he was in touch with Russians.

A. No, he never mentioned any such thing.

Q. Did your husband at any time ever mention to you that he was engaged in any spying or espionage work or transmitting information received from various sources or from any source to the Russians?

A. He wasn't doing any such thing. He couldn't possibly have mentioned it to me.

Q. Now, will you be good enough to tell us the condition of your health in the fall of 1944 and part of the year 1945?

A. Well, it so happens that I have had a spinal curvature since I was about 13 and every once in a while that has given me some trouble, and at that time it began to kick up again, and occasionally I have to get into bed and nurse [fol. 1973] a severe backache. Through the bargain, I de-

veloped a case of low blood pressure, and that used to give me dizzy spells, sometimes to the point where I almost fainted. I also had very severe headaches, and it finally got so bad that I went to visit my doctor.

Q. Who is your doctor?

A. Doctor Max Lionel Hart of Rego Park, Long Island.

Q. Is Dr. Hart one of the witnesses listed as a Government witness in this case?

A. Yes, he is.

The Court: What is the point there? Why ask her that question? What is the relevancy of that?

Mr. A. Bloch: Why not?

The Court: You mean to say that the Government has to call every witness listed on that?

Mr. A. Bloch: I didn't say anything of the kind. I am just identifying the man. That is all.

The Court: All right. Go ahead.

(Last question and answer read.)

Q. And how long between that period, between the fall of 1944 and the middle of 1945 were you under Dr. Hart's care, professional care?

A. Well, I used to go for iron injections once or twice a week, at least once a week and very often twice a week regularly.

Q. And that was during the period in which you claim [fol. 1974] to have participated in this espionage plan?

A. Well, that was the period between the fall of 1944 and the spring of 1945.

Q. You were ill in November 1944, weren't you?

A. Yes.

Q. You were ill in January 1945, weren't you?

A. I wasn't well at any time during those months.

Q. Now, during that period how old was your first born baby?

By the Court:

Q. But you saw your brother, didn't you, when he came in on his furlough in January, 1945?

A. Yes, I did.

(Last question read.)

The Witness: It was right after he was a year and a half old. From a year and a half to the time he was two.

Q. And what was the condition of your child's health?

Mr. Saypol: I object to this line of questioning on the ground it is irrelevant. I have refrained from objections.

The Court: I think we have permitted you to go here far enough on this, Mr. Bloch.

Mr. A. Bloch: Well, I won't go much further, but I am going to urge this question, if your Honor please.

[fol. 1975] The Court: Is this the last one on the subject?

Mr. A. Bloch: I hope so.

The Court: Go ahead.

Q. Will you answer the question?

A. Yes. The condition of my child was very poor. I had had a very difficult time ever since his birth, I mean, with him. He was given to severe cold and sore throat with high fever. It wasn't the usual thing of where a baby gets sick occasionally. It was practically every week in and week out. By the time he was a year and a half old, that winter was extremely severe, the winter between the time he was a year and a half to two.

Q. 1944 and 1945?

A. That is right.

Q. Now, I promised the Judge that this would be the last question and I will keep my promise. Going down to the fall of 1945, the testimony here has been, September of 1945, your brother then came to New York on a furlough. This is the second furlough, right?

A. Yes.

Q. And it has been testified to by both your brother and your sister-in-law that when he came he brought along information concerning the atomic bomb and gave that information to your husband and that he had also drawn a sketch, a cross-section sketch of the atomic bomb and had given that to your husband and that he had also written out [fol. 1976] instructions and explanations concerning the atomic bomb, filling I think he said 12 pages of matter, and it was testified, page 1010, that David—at least that is what your sister-in-law testified to—David gave Julius the written information and Julius said he was very pleased

to get it, and on the occasion of a visit in your home he went into another room and read it over; and after he read it he said this had to be gotten out immediately and your husband wanted you to type it right away. Is that a fact or is it not a fact?

A. It is not a fact.

Q. Did you ever hear any such thing about your being asked immediately to type information concerning the atomic bomb or any other information that had been transmitted by your brother to your husband?

A. No.

Q. Did you ever type any such information?

A. No, I never did.

Q. Was there ever handed to you any sheaf of papers consisting of 12 pages or any other number of pages with instructions to copy it?

A. No.

Q. Did you ever copy any information concerning the atomic bomb or any other secret in September 1945 or at any other time?

A. No, I never did.

Q. Your sister-in-law further testified that Ethel got out a typewriter and sat down to work on the notes. Did that [fol. 1977] ever happen?

A. No, it did not.

Q. And where was the typewriter placed, your sister-in-law was asked, and the answer was on the bridge table. Did you have a typewriter on that occasion or on any other occasion on the bridge table or copy anything concerning the atomic bomb?

A. No, I never did.

Q. Your sister-in-law further testified while Ethel was typing the notes and David was helping her when she couldn't make out his handwriting, and explaining technical terms and spelling them out for her, Julius and I, I meaning your sister-in-law, helped her with the phraseology when it got a little too lengthy, wordy. Did any such thing occur?

A. No, it did not.

Q. Then she said when you had typed and copied these notes Julius burned the original notes in the kitchen and he flushed the ashes in a bowl. Did you ever see your hus-

band burn notes pertaining to the national defense and flushed the ashes in a bowl?

A. No, I did not.

Q. Any bowl? Your sister-in-law further testified that on that occasion Julius gave Dave $200. Did you see your husband give Dave $200?

A. I did not.

Q. On that occasion?

A. No.

Q. Were you told by your husband or anyone else that [fol. 1978] Julius had given your brother $200?

A. I never heard any such thing.

Q. Did your brother ever tell you that he got $200 from Julius?

A. No, he did not.

Q. On that occasion or any other occasion?

A. No.

Q. Did your sister-in-law ever tell you that her husband got $200?

A. No, she did not, either.

Q. Was there anything either expressly or by implication conveyed to you in September 1945 or at any other time that your husband was engaged in espionage and that he was getting information from different sources and transmitting that information to Russia or Russians, whether the U.S.S.R. or Russian officials?

A. No, nobody ever told me any such thing.

Mr. A. Bloch: Your Honor, do you want to suspend a few minutes now?

The Court: Well, I thought you were going to be very brief, you told me, on this examination.

Mr. A. Bloch: Well, I think that I can't adequately get in her denial——

The Court: I think it is covered, Mr. Bloch. If I may suggest, instead of each particular detail I am sure Mr. Saypol would have no objection to a blanket question concerning this material.

Mr. A. Bloch: Well, may I say to you that I have covered [fol. 1979] the major portion of her testimony and there are only three or four items that I want to cover.

The Court: Well, we will take a recess but I find this:

I find that most lawyers, and I was probably guilty of it myself when I was practicing law——

Mr. A. Bloch: I know you were.

The Court: (Continuing) You think you are going to do something in a brief period and you usually find that you like the sound of your voice, and before you know it you double the time you have asked for. So I say this now in advance in connection with the summations which are going to take place, that you all have an allotted time and I am going to hold you to it. That goes for everybody. The Government as well as the defense are going to be held to your allotted time. I do hope you draft your summations in accordance with the time allotted.

Mr. A. Bloch: I am going to sit down tonight and draft it.

The Court: Well, we will take a recess at this point, and see whether you won't follow my suggestion.

Mr. A. Bloch: I will try to.

(Short recess.)

[fol. 1980] By Mr. A. Bloch:

Q. Mrs. Rosenberg, the testimony show- that your brother left the Army in February, 1946.

A. Yes.

Q. Now, was there an occasion after he left the Army when your brother and his wife stayed at your home for about nine or ten days?

A. Yes, there was.

Q. Do you recall what part of the year that was in?

A. Yes. That was at the end of February or the beginning of March.

Q. You and your husband went out of town for nine or ten days?

A. Yes, and the child.

Q. And the child?

A. That is right.

Q. Where did you go?

A. We went to a place called Rivercrest Inn that overlooks the Hudson.

Q. And you stayed there you say for nine or ten days?

A. That is right.

Q. And you permitted your brother and his wife to stay in your home during that period?

A. That is right.

Q. Did you when you left your brother and sister-in-law in your home state to them or to either of them that you were going away and that you wanted them to stay in your apartment in case any important mail or telephone calls were to be received, insinuating that you or your husband expected mail or telephone calls of a secret nature?

[fol. 1981] Mr. Saypol: May the characterization be stricken?

The Court: Was there a characterization in the question?

Mr. A. Bloch: I will eliminate the last phrase.

The Court: I don't know whether that was in the portion you read back. Eliminate the insinuation.

Mr. A. Bloch: I eliminate from my question the last phrase.

The Court: The insinuation part.

Mr. A. Bloch: The insinuation.

Mr. Saypol: It was testified to as a fact, not as an insinuation, if the Court please.

A. Well, it was not a fact.

Mr. A. Bloch: Will the reporter read the first part of the question and leave out the insinuation part.

(Last question read as follows:

"Did you when you left your brother and sister-in-law in your home state to them or to either of them that you were going away and that you wanted them to stay in your apartment in case any important mail or telephone calls were to be received?")

The Witness: I didn't say anything like that.

[fol. 1982] Q. Did your husband, in your presence, say anything like that?

A. No, he did not.

Q. Now, what was the occasion of their staying in your home? Did they have an apartment of their own?

A. No, they didn't.

Q. He had just come back from the Army, had he not?

A. That's right.

Q. And as far as you knew, they had no place to live?
A. That's right.
Q. Who suggested that they stay in your home for ten days?
A. I did.
Q. You did?
A. Yes.
Q. You invited them to stay in your home?
A. That's right.
Q. Your sister-in-law testified that on a certain occasion in 1946, or at least she thought it was in 1946——

Mr. A. Bloch: That is page 1013.

Q. —your sister-in-law visited you at your home and that she noticed a piece of furniture and that that piece of furniture was a mahogany console table; and that she had a conversation with the Rosenbergs—that means you and your husband—concerning the table; that she said that she admired the table and she asked you "when she bought a new piece of furniture," and that "she said she had not bought it, she had gotten it as a gift"; that she said "it was [fol. 1983] a very nice gift to get from a friend," and that "Julius said it was from his friend and it was a special kind of table," and thereupon your husband, Julius, "turned the table on its side to show us why it was so special"; did any such thing ever occur?
A. No, it did not.
Q. She further testified that your husband, in your presence, turned the table on its side and that "there was a portion of the table that was hollowed out for a lamp to fit underneath it so that the table could be used for photograph purposes," and that your husband said that "when he used the table he darkened the room so that there would be no other light and he wouldn't be obvious to anyone looking in"; did you hear any such conversation, at any time, either in 1946 or 1947, or at any other period?
A. I never heard any such conversation.
Q. Did your husband ever use any table, console table or any other table, for photograph purposes?
A. No, he did not.
Q. Did your husband ever photograph on microfilm or any other substance anything pertaining to any informa-

tion or secret concerning the national defense, or anything else at all?

A. No, he did not.

Q. Your sister-in-law further testified in answer to a [fol. 1984] question, I think Mr. Kilsheimer put:

"Q. And did Julius Rosenberg tell you what he photographed using the table?"

And his answer was:

"Yes. He took pictures on microfilm of the typewritten notes."

Did any such thing ever take place?

A. No, it did not.

Q. Did your husband ever take pictures on microfilm of any typewritten notes?

A. No, he did not.

Q. Now, she further testified—and when I say "she," I refer to your sister-in-law——

Mr. A. Bloch: Page 1015.

Q. —that on a certain occasion David—that means your brother—"mentioned that he had been offered a job to return to Los Alamos as a civilian at a very nice salary, and Julius asked him if he had accepted" and that your brother said, "No," and that Julius said "that he was very displeased, that David should have continued to stay there because he would have access to valuable information." Did you ever hear any such conversation?

A. No, I never did.

Q. Were you ever informed by anyone, either your husband, your brother, or your sister-in-law, that any such conversation took place, until she testified to it on the [fol. 1985] stand here?

A. No, sir.

Mr. Saypol: Now, may I point something out, if the Court please? You just referred to page 1015 of the record, Mr. Bloch.

Mr. A. Bloch: Yes.

Mr. Saypol: I wish you would continue to tell——

Mr. A. Bloch: I am reading on page 1015.

Mr. Saypol: Now, I wish you would tell me in advance. Now, the reason I rise to interrupt is, if the Court will examine the testimony, the witness testifying at the time, Mrs. Greenglass, said that the only ones present were David and Julius Rosenberg and "myself," meaning Ruth Greenglass. Obviously this witness could have no knowledge of the conversations that transpired at the time.

Mr. A. Bloch: Excepting that I followed it up by asking whether anybody ever told her that such conversation was had.

The Court: All right.

Mr. A. Bloch: Now, turn to page 1016.

The Court: Are you taking up every conversation that supposedly she had with Julius?

Mr. A. Bloch: No, your Honor, I won't spend much more than a few minutes more to cover it.

The Court: I don't want you to get the impression I am [fol. 1986] rushing you, but I don't want you to overtry a case, Mr. Bloch.

Mr. A. Bloch: I hope I am not overdoing it. I don't think I am.

Q. Did Julius ever tell you at any time that he was having students educated in various institutions in this country, for the purpose of their becoming ultimately useful to the Russian Government?

A. He never told me any such thing.

Q. Did Julius or anybody else ever tell you that these students were being subsidized by the Russian Government and that money was coming from the Russians to pay the expense of educating those students?

A. I never heard any such thing.

Q. Did anybody ever tell you that Julius wanted David to go to school to get a complete college education and that that education was to be partly subsidized by Julius, with money received by him from the Russian Government; did you ever hear of that?

A. No, I never heard of any such thing.

Q. Did you ever hear from any source that Julius offered your brother and sister-in-law $75 or $100 a week to live on, so that they will be able to get information from various sources?

A. No, I never did.
Q. Concerning the national defense?
A. No, sir.
[fol. 1987] Q. Did you ever hear Julius say to anyone that he got money from the Russians?

Mr. A. Bloch: Page 1019.

A. No, I never heard any such thing.
Q. Now, do you recall a talk had between you and your husband in or about the month of February, 1945, a short time after your brother had left from his first furlough, concerning something that your sister-in-law had told them in her house, about Julius wanting or contemplating making some money by stealing or getting something from the Government depots?

Mr. Saypol: I object to the question as to form. All Mr. Bloch has to do is add "gasoline and tools", then he will be leading the witness completely and will have given her every detail of the conversation.
The Court: Have the question read back, please.

(Question read.)

The Court: Go ahead, I will permit the question.

A. Yes, I recall such a conversation.
Q. Now, will you give us, as far as you can recollect the substance of what your husband told you and what you told him at the time?
A. Well, he came home and he said that Ruth was kind of worried about some crazy notions that Dave had about [fol. 1988] making some money, about taking some things, and I said, "Well, what did you tell her? Did you make sure to tell her to warn him about it, not to do it?"
He said, "Yes," that he had.
So then I asked, "Well, did Ruthie say that she would do that, that she would warn him?"
And he said, "Well, she kind of nodded her head at me and I got the feeling that she agreed with me."
And I said, "Well, all right, then I guess there is nothing to worry about."

By the Court:

Q. Well, you were in communication, were you not, with your brother, when he was at Albuquerque? You were corresponding with him, I think you told us this morning.

A. Yes.

Q. Did you ever, in any one of those letters, tell him to be sure not to steal anything from the Army?

A. No, I didn't say anything like that in any letter.

By Mr. A. Bloch:

Q. Did you know at the time you communicated with your brother that his letters were censored?

A. No, I don't think I knew anything like that.

Q. I don't hear you.

A. I say no.

[fol. 1989] The Court: She said she doesn't think she knew.

Q. Now, do you recall any conversation had with your husband in or about the month of May of 1950?

A. Yes.

Q. A few days prior to the arrest of your brother, concerning any talk that your husband had with Dave?

A. Well, I couldn't say whether just how far along in May it was or just how much before my brother was arrested that such a conversation took place, but——

Q. Well, do you remember any conversation had on that subject at or about the time of your brother's arrest?

A. Yes, I do.

Q. Now, if you do recall that conversation, will you give us the substance of it?

A. Well, as I recall, I think my husband spoke to me twice.

[fol. 1990] Q. I can't hear you. I am awfully sorry.

A. I say, I recall my husband talking about Dave with me twice during that time.

Q. Well, what was the substance of those conversations?

A. Well, the first time he said that Davey had demanded $2000. from him and had seemed pretty upset, and that when my husband told him that he had no such amount of money, he couldn't raise any such money for him, he said, "Well, could you at least do me another favor? Could you

at least get me, find out if your doctor will give me a vaccination certificate?"

Then another time——

The Court: Did he add why he wanted that vaccination certificate?

The Witness: No, I don't recall my husband telling me anything of any reason for it.

Q. Yes?

A. Except that Dave said that he was in a jam, he was in some trouble.

Q. Were you worried about it?

A. Yes, I was.

By the Court:

Q. Well, forget whether you were worried about it; what did you do about it?

A. Well, I said to my husband, "Well, doesn't he know the kind of financial situation we are in? Didn't you tell him you can't give him money like that?" And then I remember saying something to the effect that "If Ruthie [fol. 1991] doesn't stop nagging him for money, she is liable to give him another psychological heart attack like he had in the winter."

By Mr. A. Bloch:

Q. Where was your sister-in-law at that time?

A. Well, it is hard for me to say, because she was in the hospital and then she was out and then she went back to have a baby, and sometime after that her burns began to fester and she returned to the hospital. I couldn't say whether she was home then or not.

Q. Now, do you recall another conversation you had with your husband concerning Dave, sometime later than this talk you have just now narrated?

A. Yes, I do.

Q. Give us the substance of that.

A. Well, this time my husband told me that Davey really must be in some very serious trouble, that he was extremely nervous and agitated and that he began to talk wildly, threatened that he would be sorry if he didn't—my husband

said that David threatened him, that he, my husband, would be sorry if that money wasn't forthcoming.

Q. What did you say or do about it?

A. Well, I told my husband that I thought I should call the house and find out if everything is all right, and my husband said, "Well, the only thing is, Dave may be working, he may not even be home and I have no way of knowing just how much of this Ruthie knows about," and she [fol. 1992] has really had her hands full between her burns and having given birth to a child, and perhaps it would be wiser if he took it upon himself to see him at the earliest opportunity he could.

Q. When you say "For him to take it upon himself," whom are you referring to?

A. My husband, so that I wouldn't have to make arrangements the next day for a sitter to run over to my brother's house.

Q. Now, coming down to some period, sometime after the arrest of your brother, your sister testified——

The Court: Sister-in-law.

Mr. A. Bloch: Sister-in-law.

Q. (Continuing) Your sis-er-in-law testified that "Ethel came"—"Ethel," referring to you—"came with pie for me and gifts for my son"—it means her son—and after we talked—in your mother's house—"for a few minutes, you asked her would she please go out and walk with her; then you walked around the block several times, and that she said—no—and that you said that your counsel advised you to see her personally and get assurances from her that David would not talk; that you said that it would only be a matter of a couple of years and in the long run "we all would be better off," and that Julius had been picked up by the FBI for questioning, and that Julius had said [fol. 1993] he was innocent and that he had been released; and that you had no doubt that he would probably be picked up again; and that your husband would continue to say that he was innocent, and that if David would also say that he was innocent and that Julius was innocent, it would strengthen everybody's position; everybody would have a better—— would stand a better chance, and that you said,

"Do you think it is a dirty shame for David to take the blame and sit for two?" I don't know what it means to "sit for two"; but did any such conversation take place between you and your sister-in-law?

A. Well, I had a conversation with my sister-in-law, but it wasn't like that at all.

Q. How many times in all did you talk to your sister-in-law after the arrest of your brother?

A. I think it was about twice.

Q. Well, do you remember when the first conversation was had with her, I mean, after June 16th, was it, that your brother was arrested?

Mr. A. Bloch: Mr. Saypol, when was that?

Mr. Saypol: June 15th.

A. Well, I came to my mother's house because my sister-in-law, Gladys, was due home from the hospital that day. My children hadn't seen her for some time. I decided that when I picked the child up at 3 o'clock from school that I [fol. 1994] would take both youngsters down with me to my mother's house, to see my sister-in-law, Gladys.

Well, while I was there, my sister-in-law, Ruth, came in, and at that time I asked her how she was feeling, and she said that she still had some difficulty in getting around because of the burns, and then I asked, "Well, how is Davey?" And she said, "All right," and then she said to my mother, "Ma, I have to pick up the baby; she is outside in the carriage near my mother's store. Goodby-," and left very abruptly.

Q. Well, did you again see her that same day?

A. No, not that day.

Q. When was the next occasion that you saw her?

A. Well, the next time was on a Saturday. I had come down in the hopes that I would be able to go and visit my brother. I had gone to my mother's house and found nobody there. I went over to her mother's house and her mother told me that she had already left with my mother to see——

Q. To visit Davey?

A. That's right; to visit Davey.

Q. Yes?

A. And she said that my aunt had been supposed to go

along, too. Well, on my way, I was going to go home, and on my way home I decided I would look in once more at [fol. 1995] my mother's house, and this time I found my aunt; she had not been permitted to go, for some reason, and so I stayed there and waited until my sister-in-law and my mother returned from visiting my brother; and when they came in I began to ply her with questions as to his health and how he was standing up under jail; and when I might get to see him; and my mother said, "Well, look, Ruthie is very tired and very hungry. Suppose we sit down and eat and talk later." So I did that. We sat down and had a bite to eat, and afterwards Ruth said that she was going to pick the child up, it was almost time for her bath, and when we got to her mother's house, to the store where everyone was, with the carriage, she said, "You know, it is such a nice day, I think I will stay down with her another ten minutes. Then I will take her upstairs for her bath." So we began to walk, she and I, with the carriage, around the block, and I said, "Look, Ruth, I would like to know something; Are you and Davey really mixed up in this horrible mess?"

First she hesitated. So I said to her, in order to encourage it, in order to encourage her, "You know how I feel towards Davey. You know how I always felt towards him and how I have always felt toward you, although I must say that you people haven't always reciprocated, [fol. 1996] especially in the last year. However, that is besides the point. I want you to know that even if you did do this, and Davey, my attitude towards you and my feelings toward you won't change. I will stand by and help in any way that I possibly can. But I am his sister and I do have a right to know."

At that she flared up and she said, "What are you asking such silly questions for? He is not guilty and of course I am not guilty and we have hired a lawyer and we are going to fight this case because we are not guilty. Did you think we were?

And I said, "Look, I really didn't know what to think any more. There have been reports in the newspapers about confessions and much as I believed, always believed

in Davey, I really began to wonder. I had to hear it from your own lips."

And she said, "Well, now you have heard it and it is the truth. Neither of us is guilty."

Then she said something about having to go to the doctor. We had returned to the house, to the store, and her mother said, "You know, it might be a better idea to go to the doctor now while you are downstairs instead of going back upstairs and having to come down later after you have worked with the children. You know you are still not well." So she agreed, and I walked her part of [fol. 1997] the way, because it was in the direction of my own house. I walked her as far as East Houston Street, before I went to take the bus on Essex Street to go home; and as we talked—as we walked, we talked, and I asked her, "How are you making out as to living expenses? Have you enough money?"

She said, "Well, I have been asking my relatives and I am trying to raise money. It is pretty hard," and she sort of looked at me; so I said, "Look, Ruthie, I don't know what I would give to be able to say that I have some money that I can give you. I wish I could do that, but I really can't at the moment. You know how it is. However, if I can think of anyone that might possibly lend me some money for you, you can be sure I will do whatever I can," and with that we reached East Houston Street and I put my arms around her and kissed her. She remained rigid in my arms, didn't return the kiss, said, "Goodby" coldly, turned on her heel and left.

[fol. 1998] Q. That was the last talk you had with her?

A. That is right.

Q. Did you at any time either on that occasion or any other occasion, either in words or in substance ask her to get an assurance from Dave that he was not going to talk, that he was going to claim he was going to be innocent, or that he was innocent, and that if he does that, everybody will be okay and satisfied?

A. No, I never said any such thing.

By The Court:

Q. Well, as far as Dave personally was concerned, disregarding for a moment what he had to say about you and your husband, as far as he personally was concerned, did you want him to make a confession of his guilt at that time or did you want him to deny his guilt?

A. I wanted him to tell the truth, whichever it was.

Q. Even if it implicated him, is that right?

A. That is right.

Q. Then what did you mean by standing by him?

A. Well, I wouldn't love any less.

Q. Is that what you meant by standing by him?

A. That is right.

Mr. A. Bloch: May I have that watch?

(Mr. Lane hands to Mr. A. Bloch.)

[fol. 1999] By Mr. A. Bloch:

Q. There has been some testimony here to the effect that your husband told your brother that he had received from the Russians a watch, a wrist watch for you. Did you ever hear of that before?

A. Not——

Q. Until testified to here?

A. Not until I heard it in the courtroom.

Q. Now, did you have a wristwatch?

A. Yes, I did.

Q. I am holding in my hand a wristwatch that has been marked 30-D for identification, and ask you whether that is your wristwatch?

A. That is my wristwatch, yes.

Q. Speak louder.

A. Yes, that is it.

Q. Is this the only wristwatch you ever had?

A. I had one my brother Sam gave me that I lost once when I was going swimming.

Q. How long ago was that?

A. Oh, I must have been eighteen or nineteen.

Q. Now, who gave you this wristwatch?

A. My husband gave me that wristwatch.

Q. When?

A. Well, it was my birthday, 1945; September 28, 1945.

Q. And at that time after you got this wristwatch from your husband, it was the only wristwatch you had?

[fol. 2000] A. That is right.

Q. Did anybody ever tell you or intimate to you that this wristwatch came from the Russians?

A. No.

Q. Or that the Rusians paid for it?

A. No.

Q. Now, do you recall a trip that you took with your husband from Plattekill, is it?

A. Plattekill.

Q. Where is that?

A. Plattekill, New York.

Q. Do you remember how you came down when you returned to New York from Plattekill?

A. Yes. The man who owned the place that we were staying at took us in his car to Newburgh and then we took a ferry across.

Q. And did you come down on the train?

A. Yes.

Q. Was it East or West Shore?

A. East Shore.

Q. Do you know what, if anything, happened on that trip?

A. Yes.

Q. What happened?

A. My husband's wristwatch was lost.

Q. When you came to New York, what did your husband do about that wristwatch?

A. Well, we were in the taxicab on the way home and I said, "You know, you really should have put in a claim." He had gone back and asked for it through the train when he discovered that it was gone and had been unable to find it. He left the taxicab. I sat there with the children, and he went back to the inside. We were right outside the [fol. 2001] terminal; and he put in a claim for the wristwatch.

Q. He reported it to the people there?

A. Yes.

Q. In the office?
A. That is right.

Mr. A. Bloch: Will your Honor pardon me for just a moment?

That is all as far as I am concerned.

Mr. E. H. Bloch: I have just one question.

Cross Examination.

By Mr. E. H. Bloch:

Q. Do you remember when I became your husband's counsel?
A. Yes, I do.
Q. When?

The Court: That is two questions already.
Mr. E. H. Bloch: I think there will be four. I am going to apologize to the Court.

A. Well, it was a day after my brother David was arrested—the night after, I should say.
Q. Did you subsequently come down to my office with your husband after he had interrogated by the FBI?
A. Yes. Some time later.
Q. And did you also come down to my office when you were subpoenaed to appear before the grand jury?
A. Yes, sir, I did.
Q. And that I become your lawyer also?
A. Yes.
Q. Did I ever advise you to go to see Ruthie Greenglass and tell Ruthie Greenglass to tell her husband to keep [fol. 2002] his mouth shut?

The Court: What has that got to do with it? There has been no accusation hurled at you.
Mr. E. H. Bloch: But Ruthie Greenglass testified that Ethel Rosenberg said her lawyer sent her down.
The Court: All right, go ahead.

A. No, you never told me to do any such thing.
Q. Well, what did I tell you to do with respect to the Greenglass family?

A. You told me to stay away from them.
Q. Did I tell you I believed that they were your enemies?
A. Yes, you told me that.

Mr. E. H. Bloch: That is all.

The Court: You may cross examine. Any questions, Mr. Kuntz?

Mr. Kuntz: No, sir.

Cross Examination.

By Mr. Saypol:

Q. When did your husband lose this watch?
A. I didn't hear you. When, did you say?
Q. Yes. I say in what year. When?
A. That was the end of August, 1948.
Q. He reported the loss to you?
A. No, he didn't.
Q. Your lawyer asked you about the place where it was reported and you said in the office. In which office did he report it?
A. I didn't say in the office. I don't recall saying any-[fol. 2003] thing about an office.
Q. Didn't you hear your lawer a few minutes ago say did you report it in the office and didn't you say yes? Didn't you answer that?

Mr. A. Bloch: If your Honor please, she didn't say so at all. She said her husband reported it and she remained in the taxicab.
The Court: Well, I don't remember what she said exactly.

By The Court:

Q. What is the fact? Who reported it?
A. My husband reported it.
Mr. Saypol: May we refer back to the record?
The Court: Just a moment.
Q. Where?
A. He went inside.
Q. Where? Give us the approximate address.
A. I don't remember the exact address.

Q. Where did you take the taxi from when you came in?
A. From the railroad terminal.
Q. Where was that terminal?
A. I really don't remember. I know it was the New York Central.
Q. You mean at Grand Central Terminal?
A. Yes, that must have been it.
Q. Was that where your husband went to report it?
A. Yes.
[fol. 2004] Q. At Grand Central Terminal?
A. I think—that is my best recollection.

By Mr. Saypol:

Q. Did he report it when he got off the train or did he report it at some other time?
A. Well, I told you he reported it after we had already gotten into the taxi, because he had looked through the train himself; he had asked the conductors; he had asked people, but then he finally had to leave.
Q. A little while ago in response to a question from the Judge you said that you told your sister-in-law that your brother David should tell the truth; is that right?
A. That is right.
Q. And you likewise are telling the truth?
A. I certainly am.
Q. And you have told the truth throughout?
A. That is right.
Q. Do you remember having been before the grand jury?
A. That is right.
Q. And were you sworn there?
A. Yes, I was.
Q. Were you warned there of your constitutional rights against incrimination?
A. That is right.
Q. Did you volunteer the information there that you had talked with Mr. Bloch and obtained advice from him before you came to testify?
[fol. 2005] A. I don't know if I was asked any such question.

Q. When questions were asked of you there, did you tell the truth there, too?
A. Yes, I did.
Q. As to everything that was asked of you?
A. That is right.

Mr. Saypol: Would you be good enough, Mr. Schaefer, to mark this for identification?

(Marked Government's Exhibit 31 for identification.)

Mr. Saypol: I would ask leave in respect to this exhibit to substitute a photostatic copy for the original.
The Court: Are you offering it?
Mr. Saypol: I will in a moment.
The Court: Well, when it is offered.
Q. I show you Government's Exhibit 31 for identification, Mrs. Rosenberg. Is that your signature?
A. That is right. It is.

Mr. Saypol: I offer it in evidence (handing to Mr. A. Bloch.)
Mr. A. Bloch: No objection.

Let me look at it again, Mr. Saypol.

(Handed.)

Mr. A. Bloch: That is objected to. My son has just called my attention to the fact that it covers the question of [fol. 2006] alleged Communism, and I therefore object to the introduction of this paper in evidence on the ground it is incompetent, irrelevant and immaterial.
The Court: Well, let me look at it and I will rule.
Mr. Saypol: I am handing the Court the original together with the photostat.
The Court: Well, Mr. Saypol, I am not prepared to sustain the objection on the grounds urged by counsel, but I don't see as yet the connection. I think you ought to establish the connection between the signature on this document and the petition itself.
Mr. Saypol: She has said it was her signature.
The Court: Yes, but what is its relevancy to the case? She may have signed a lot of papers.

Mr. Saypol: Very true. That is an adequate defense. I shall connect it in any event.

The Court: Oh, wait a minute. I didn't read the top part.

Mr. Saypol: Is it apparent to your Honor now?

The Court: Just a moment.

Mr. Saypol: Excuse me.

The Court: I will admit it. Objection overruled.

[fol. 2007] Mr. A. Bloch: I except, your Honor.

(Marked Government's Exhibit 31.)

Q. As a matter of fact you have admitted previously to having signed this paper, haven't you?

A. I would like the advice of my——

Mr. E. H. Bloch: If the Court please, just a second. If the Court please, I can't avail myself of any privilege for any witness, but with the Court's permission I would like to advise this witness if she so desires she may avail herself of her privilege against self-incrimination with respect to this document or any other matter relating to her alleged connection——

The Court: You mean further interrogation. The document has been admitted into evidence. She admitted it was her signature. The document was identified. I overruled your objection as to relevancy. Now, the document is in. Now you are talking about further questioning concerning the document.

Mr. E. H. Bloch: I am not only talking about further questioning, your Honor, but this went in, I think, may I use the word, prematurely, without giving the witness an opportunity to avail herself of her privilege.

Let us assume that she said "Yes, this is my signature," and then she asserts to the Court, "Well, I want to exercise [fol. 2008] my privilege," I wonder whether the Court would have received the document.

The Court: Oh, no, I don't agree with you. You see, what you are confusing is this, and you had better bear this in mind: there are two types of evidence; the type of evidence that comes in as direct evidence; and there is the type of evidence that comes in where the witness himself or herself makes an admission, and it is on that type of evidence only that this privilege has any relevancy.

On the direct evidence the Government has a right to prove its case if there is any relevancy to it, and I have already ruled that there is relevancy. Now, with respect to this particular document, all that the witness was asked was whether or not that was her signature, and the witness said that was her signature.

Now, as to whether the document then became relevant was a question of law for me to pass upon and you have objected to it on that ground and I overruled your objection. It was just as if, as I see it, direct proof had been offered, and there probably would have been, as you know, other ways for the Government to establish the signature of this witness.

Mr. E. H. Bloch: I think there is no question about that, your Honor, but the thing that worried me was not only [fol. 2009] in connection with Communist questions, but I am concerned whether or not I was remiss in my duty in not advising this witness, prior to the time that she was shown this document, whether or not to answer the question whether or not it was her signature, but it is in, and I just want to assert my thoughts with respect to any further questioning.

The Court: Go ahead.

By Mr. Saypol:

Q. Just to complete the record, reverting now to your appearance before the grand jury, Mrs. Rosenberg, when did you appear before the grand jury?

A. Well, it was——

The Court: Do you know, Mr. Saypol, if you could probably stand at the edge of that table there, we could all hear much better.

Mr. Saypol: I am trying to save space and time.

The Witness: Well, it was after my husband's arrest.

Q. He was arrested on July 17, 1950, wasn't he?

A. That is right.

Q. As a matter of fact, that was the same day as you had the conversation with Ruth Greenglass to which you have testified?

A. What date was that?

[fol. 2010] Q. July 17, 1950.

A. Not to my recollection.

Q. Now, your husband was arrested on July 17th, and when after that did you appear before the grand jury?

A. It might have been a week or it might have been two weeks after.

Q. As a matter of fact, didn't you first appear on August 7, 1950?

A. Well, I said I really can't remember the exact date.

Q. Do you remember on August 7, 1950 having appeared before the grand jury in this court house and been questioned? You were questioned by Mr. Lane?

A. Yes, I was questioned by Mr. Lane.

Q. Were you asked this question and did you give this answer after identifying yourself and after being sworn:

"Q. You have appeared here in response to a grand jury subpoena that was served upon you? A. Yes."

Do you remember that?

A. Yes.

Q. "Q. When was that served upon you? A. It was served last Monday.

"Q. Do I understand you have consulted an attorney since you have received that subpoena? A. That is right.

"Q. And he no doubt has advised you on your constitutional rights? A. That is right."

[fol. 2011] Then Mr. Lane went on to be sure that you understood what your rights were. He told you about your right to refuse to answer any questions if the answers might tend to incriminate you. Did that occur?

A. Yes.

Q. Were these questions asked and did you give these answers?

A. Yes.

Q. And did Mr. Lane advise you that way?

A. Yes, he advised me.

Q. Were you asked at that time whether you had ever signed a petition for the Community Party?

A. I was asked that.

Mr. E. H. Bloch: Pardon me. If the Court please, I object to this question upon the ground that there doesn't

appear to be any inconsistency. The witness has testified that this was her signature.

The Court: Well, I think he just wants to bolster his point that the privilege has been waived before.

Mr. E. H. Bloch: Oh, if that is the purpose——

The Court: Is that what you had in mind, Mr. Saypol?

Mr. Saypol: Pardon me?

The Court: That she was asked about it and the wit-
[fol. 2012] ness had answered the question before the grand jury.

Mr. Saypol: That is so.

The Court: That the privilege was waived at that time and therefore it would be waived on this particular occasion.

Q. You were present before the grand jury on more than one occasion, weren't you?

A. Twice.

Q. The second time was on August 11th?

A. It was a few days after the first time.

Q. Were you asked this question and did you give this answer: "Q. Did you ever sign a Communist Party nominating petition for elective office? A. I did sign a Communist Party petition."

A. I refuse to answer on the ground that this might tend to incriminate me.

Q. Were you asked that question and did you give that answer at that time?

The Court: He is asking you whether you were asked that question before the grand jury. What is the date of that?

Mr. Saypol: August 11, 1950.

The Court: And whether you gave that answer.

Mr. E. H. Bloch: If the Court please, I think this raises a very interesting question of law which the Supreme Court grappled with on this last Rogers case.

[fol. 2013] Mr. Saypol: We are not grappling here at all. I am having no trouble.

Mr. E. H. Bloch: Please, Mr. Saypol, I am addressing myself to the Court.

The Court: Go ahead. Address yourself to me.

Mr. E. H. Bloch: Let us assume that at some time this witness has admitted certain things, whether in a formal proceeding or an informal way——

The Court: Go ahead.

Mr. E. H. Bloch: And then the witness is called before a competent body where the witness is duly sworn and testimony is sought to be elicited. Then the witness is asked, "Well, didn't you say at such and such a place, and such and such a time this and that"—that incriminating testimony, and the witness then states, "I refuse to answer. I now avail myself of my privilege."

Now, I submit, your Honor, that that privilege is good and by admitting that perhaps on some other occasion the witness may have admitted this incriminating fact doesn't estop the witness subsequently from asserting it, and it seems to me we are getting into that kind of legal question on this last question that you asked the witness, Mr. Saypol, and that is the reason I rise to advise this [fol. 2014] witness that if she desires to avail herself of the privilege, she may. Then the Court of course may rule upon whether her assertion is justified.

The Court: Supposing he were to ask her, "Did you tell the truth before the grand jury"?

Mr. Saypol: That is exactly what I have in mind.

The Court: Would you say she can assert privilege and refuse to answer that?

Mr. E. H. Bloch: I would think yes, your Honor. We had the very same question with Julius Rosenberg——

The Court: Just a moment. Let us assume that it has nothing to do with this particular topic. Let us assume it deals with another topic completely.

Mr. E. H. Bloch: Not incriminating in character?

The Court: Well, I don't know. Let us assume that they are trying to ascertain whether the truth was told before the grand jury or in court. Would you say that a witness there would have the right to refuse to answer because it might ultimately lead to some other incrimination?

Mr. E. H. Bloch: Yes, I think so. You see, any time a witness is asked a question whereby a direct answer or by

implication a witness would be coerced into stating some-
[fol. 2015] thing that would incriminate the witness——

The Court: Well, I get your point.

By The Court:

Q. Let me ask you this: Did you tell the grand jury the truth and the entire truth when you testified?
A. Yes.

By Mr. Saypol:

Q. Did you tell the grand jury in response to the question, "Did you ever sign a Communist Party nominating petition for elective office? A. I did sign a Communist Party petition."
Was that the truth?
A. I refuse to answer on the ground of self-incrimination.
[fol. 2016] Mr. Saypol: May I proceed?

Mr. E. H. Bloch: If the Court please, here again I say that this document is in evidence. She has admitted here at this trial that this is her signature. All Mr. Saypol is asking her is whether she said the same thing before the grand jury.
The Court: All right.
Mr. E. H. Bloch: It is in evidence, here. Mr. Saypol can read that to the jury, and I don't quite see the relevancy of asking these questions about the grand jury. There isn't any inconsistency.
The Court: Go ahead.
Mr. Saypol: I desire to read the original petition, nominating petition for councilman.

(Mr. Saypol reads Exhibit 31 to the jury.)

Mr. Saypol: May I exhibit it to the jury?

The Court: Yes.

By Mr. Saypol:

Q. 111 South 3rd Street was the address your husband forgot to tell us about the first time he testified.

Mr. E. H. Bloch: I object—all right.
The Court: What is the question?

Q. I say 111 South 3rd Street is the address where you lived with your husband and about which he forgot to testify or tell us the first day of his testimony?
[fol. 2017] A. That is right.

Q. Whom did you live with there?
A. We lived with a couple by the name of Pogarsky.

Q. Also known as Page?
A. Yes.

Q. Were they members of the Communist Party?
A. I refuse to answer on the ground of self-incrimination.

Q. You told us before about some condition of your back——

By The Court:

Q. Well now Mrs. Rosenberg, do you feel it would incriminate you if you answered whether the Pages or Pogarskys were members of the Community Party?
A. Well, I am apprehensive of self-incrimination.
Q. You mean that it might hurt you in this case or you might be prosecuted in another case because you admit that you lived with these people? I must be sure that your request for privilege is well taken.
A. My request for privilege is well taken.
Q. No, I don't want you to answer that. I want you to answer my question. Do you feel that it might affect you in this case or do you feel that you might be prosecuted because of an answer that you might make in another case?
A. Whatever I might feel, I refuse to answer on the ground of self-incrimination.
[fol. 2018] Mr. E. H. Bloch: Well, if the Court please, may I say that this very same question has been the subject of a case that was decided in the Circuit Court of Appeals, Fifth District, *Estes* v. *Potter*, where I happened to represent the appellant. A witness was asked "Did you know that X was a member of the Communist Party?" And the Court held that if the witness admitted in the affirmative that he knew, it would necessarily imply that he had some

connection with the Communist Party. So the Court reversed the contempt conviction below. Now I think the Court's question is analogous. I can see what the Court is trying to elicit from the witness, whether she feels it would incriminate her in this case or in another case. If it is in this case her privilege falls; if it is in another case then she can assert her privilege. But I am just wondering whether the witness understood what you were talking about.

By The Court:

Q. Did you understand what the Court had in mind in asking these questions?

A. No, I am afraid I am not a legal expert.

Q. You know enough law to assert the privilege?

A. Yes.

Mr. Saypol: Well, I am conscious of the issue here and [fol. 2019] I shall stay with the main issue.

The Court: Very good.

By Mr. Saypol:

Q. You told us about your back before. Whom did you spend your vacation with in the summer of 1944?

The Court: I want to say to the jury in the absence of a direction by the Court, you can't draw any inferences from the refusal to answer by the witness.

Mr. Saypol: And I should think the Court would add to that the guilt or innocence on the main issue, that the jury should take into consideration ultimately when the question reaches it——

The Court: I will charge them properly.

Mr. Saypol: The causal relation.

The Court: You can't infer that the witness has admitted anything from the refusal to answer. That is all.

By Mr. Saypol:

Q. Now, will you answer my question?

A. Yes.

Q. Whom were you spending your vacation with in the summer of 1944?

A. I believe that was the summer I spent my vacation with——

Q. The Sidoroviches?

A. My sister-in-law.

Q. Weren't you with the Sidoroviches that summer?

[fol. 2020] A. No.

Q. Isn't that the summer you sprained or strained your back because you were lugging water from the well?

A. First of all I didn't sprain my back at any time. I had a spinal curvature from the time I was 13, and second of all I didn't spend the summer of 1944 with the Sidoroviches.

Q. Well, did you ever tell anybody that you strained or sprained your back lugging water from the well?

A. I don't recall saying any such thing.

Q. You said before in answer to some of your lawyer's questions that for a period you had some help?

A. Yes.

Q. In your home. I take it that was a maid. A part-time maid or full-time maid?

A. You really couldn't call her either a full-time or a part-time maid.

Q. Was there more than one?

A. There was more than one.

Q. Well, did you have a maid in 1944?

A. Part of that.

Q. What part?

A. Well, two or three months.

Q. When? The beginning of 1944 or the end?

A. The beginning.

Q. Did you have any maid at the end of 1944? I withdraw that for a moment.

[fol. 2021] What was the name of the maid you had in the beginning of 1944, do you remember?

A. Yes. Evelyn Cox.

Q. She worked in the beginning of 1944?

A. On and off because we were away for a short time.

Q. She worked for you—I am sorry, I thought you were finished.

A. No. We were away. We were out of the house for about two or three months. So she may have been with

me for one month and been away for another two or three months and then come back.

Q. You mean you were out of the house on vacation, don't you?

A. Yes.

Q. When you returned from your vacation in the fall of 1944 did she return or did you have some other maid?

A. She returned.

[fol. 2022] By Mr. Saypol:

Q. What did she do, come in days?

A. What do you say?

Q. What did she do, how did she perform her work? Did she come in days?

A. Well, she came in for a few hours a week, not days.

Q. What did she do, cleaning and dusting?

A. She did the heavy work; she did woodwork; she did ironing.

Q. Did she clean and polish the furniture?

A. That's right.

Q. Did she cook?

A. No.

Q. How long from September 1944 did she continue with you?

A. It wasn't too much longer after that, that I can recall. I really don't recall.

Q. What does that mean, what do you mean by "not too much longer"? Will you tell us, please? Was she with you for one month in 1945, for 12 months?

A. You said 1944; do you mean 1944 or 1945?

Q. Yes, did she work for you in 1945, too?

A. She may have.

Q. Don't you know?

A. I am really not sure. I am a little hazy on when she did and when she didn't. It was sporadic.

Q. When did she leave you or when did you retire her?

[fol. 2023] A. I think it was somewhere in '46.

Q. Did you part good friends?

A. Yes.

Q. Did you have any other help?

A. At what time?

Q. After—what was it, Miss Cox, Mrs. Cox?

A. Mrs. Cox.

Q. After Mrs. Cox left, did you have any other help?

A. Well, when my baby was born, the second child, I did have Mrs. Cox for a short time, helping me again.

Q. I show you Government's Exhibit 28 (showing to witness); would you be good enough to point out for me which of these tables resemble the console table that your husband, you say, bought at Macy's?

Mr. E. H. Bloch: Well, there is no such testimony, your Honor, that these are the tables. I believe Mr. Saypol introduced these to show a resemblance.

The Court: He just asked her which of the tables did it resemble.

Mr. E. H. Bloch: I am sorry, I didn't hear the word "resemble," that is why I got up.

A. Well, these are—these look a lot more fancy than what I had, but I would say that this or this (indicating) has some similarity.

Q. Pointing to the tables with the pencil numbers 1 and 2; is that right?

A. Yes, I would say there was some similarity there.

[fol. 2024] Q. In other words, a table with a back——

A. Up.

Q. —standing up?

A. That's right.

Q. Which wall in the living room did you keep that table?

A. Well, that table was kept in so many different places over the period of years that we had it, I couldn't say that it was kept on this side, it was kept on that side, because we switched around the furniture to suit our needs, as time went on.

Q. When did you return the furniture to the Steingarts?

A. My child must have been about a year or perhaps a year and half old.

Q. 1947?

A. No, it was before that.

Q. 1946?

A. Might have been 1944 or '45.

Q. Did you buy new furniture when you returned the furniture to the Steingarts?

A. We bought a console table.

Q. I say, after you returned the furniture to the Steingarts, the furniture they had loaned you, did you buy other furniture, whether new or secondhand, or did you borrow any furniture from anybody?

A. We bought some secondhand pieces from time to time.

Q. You didn't have too much furniture in the house in 1944 or '45 after you returned the Steingart's furniture, did you?

[fol. 2025] A. Well, we still had the desk; we still — a couch.

Q. Did you hear your husband testify here that the console table was kept against the northerly wall of the living room?

A. Well, I am very poor where it comes to directions. I simply couldn't say north, south, east or west.

Q. The side of the wall opposite the entrance to the kitchen and the bedroom and the bath?

A. Well, it was on the wall, at least the last time I saw it, it was on the well opposite the kitchen.

Q. As a matter of fact didn't your husband testify that the console table was kept right near the kitchen entrance?

A. Yes.

Q. Then you say the last time you saw it it was on the other wall?

A. I didn't say "on the other wall." I said, "The wall of the kitchen."

Q. Did you ever put that table in a closet?

A. I may have.

Q. Did you?

A. I really don't recall whether I did or not.

Q. Did you ever hide the table in the closet?

A. No, that I can answer. I never hid anything in the closet, table or anything else.

Q. I am talking now of the closet opposite the bathroom door?

A. Yes.

[fol. 2026] Q. Did you ever put that table in that closet and keep it there?

A. I said I may have.

Q. Well, did you or did you not?

A. I can't recall. Just a moment. There were so many changes that I made in the house, with putting things in closets and taking them out of closets, that it is perfectly true what I say, that I may or may not have put it there, and I cannot recall, because there were any number of things I put into closets and took them.

Q. The console table was practically as wide as the entrance to the closet, was it not?

A. I wouldn't know.

Q. Well, how wide was the console table?

A. Again, I just couldn't say.

Q. If you had put the console table in the closet, when would that have been?

A. I couldn't say when that might have been.

Q. Did you have any clothes in the closet?

A. Yes, I did.

Q. Was it easy to get the console table into the closet?

A. I can't recall that it was easy or hard.

Q. What was the best piece of furniture that you had in the house in 1944 and 1945?

A. Well, I would say the bookcase, the break-front; the bookcase that stood on the chest of drawers was the best [fol. 2027] piece of furniture.

Q. And what else, anything else like that?

A. I can't recall anything else of particular value.

Q. How about this nice new table?

A. Well, it was a nice new table, but it cost $21 and it was anything but a very good piece of furniture.

Q. Who were the people who visited you around that time, do you remember?

A. We had several friends; we had many friends.

Q. Did you ever tell any of them that that table was a present?

A. No, I never did.

Q. You are sure of that?

A. I am sure of that, yes.

Q. You told everybody that you bought it in Macy's for $21?

A. I wouldn't say that I told everybody. I don't know

whom I might have spoken to and whom I may not have, but I know I bought it at Macy's.

Q. But whoever you talked with, you said that that table——

Mr. Saypol: I withdraw that.

Q. Whoever you might have talked with about that table, you never told anybody that that table was a present from someone?

A. That's right.

Q. Did you see a lot of pictures here that were brought [fol. 2028] from your house?

A. Yes.

Q. Did your husband take those pictures or some of them?

A. Some of them.

Q. Did he ever do his own developing and printing at home?

A. He never did. He made one attempt in 1950 to develop some films and he did such a poor job of it that he decided that that kind of a hobby wasn't for him.

Q. Is that the first time he ever tried to develop some film?

A. That's right; first time.

Q. What did he use in connection with that try to develop some films?

A. What did you say?

Mr. Saypol: I withdraw that.

Q. What kind of material, what kind of equipment did he have and did he use in connection with his attempt to try to develop some films?

A. I don't think I could even describe it or name the stuff. It was just some developing, developer, whatever you call it.

Q. Did he have trays?

A. What did you say?

Q. Did he have trays, enamel trays, that he used for developing and printing photographs?

A. Not that I can recall.

Q. Did he have chemicals?

A. I think he had some kind of chemical.

Q. Did he have what is known as a daylight developing [fol. 2029] tank?

A. I never even heard of those words until you just said them.

Q. Don't you know that when he was arrested, the agents of the Federal Bureau of Investigation took away from your home some photographic equipment, including a developing tank and some trays?

Mr. A. Bloch: I will object to it upon the ground it is assuming something that has not been proven. It may not be proven, and it is in the record.

The Court: Overruled.

Mr. A. Bloch: Exception.

A. Well, as I told you, I know there was some kind of developer around, but I wouldn't know what you call these things.

Q. Did you ever go with your husband to have any passport photographs taken?

A. No.

Q. Did you ever go with your husband to have any passport photographs taken?

A. No.

Q. Did you ever go to a photographer's place at 99 Park Row in May or June of 1950 with your husband and with your two children to have passport photographs made?

A. No, I never went to have any passport photos made.

Q. Did you ever go to a commercial photographer at any time in the last two years to have any pictures made of you or your family or your husband or all of you?

A. Yes, we did.

Q. When?

A. From time to time.

[fol. 2030] The Court: When was the last?

Q. When in the last two years?

A. Well, it is hard to say exactly when in those two years.

Q. How often did you go to have photographs made with your family?

A. Well, we never went as a prearranged thing to go and have photos taken.

Q. When did you go on the spur or the inspiration of the moment?

A. I really can't say exactly when.

By the Court:

Q. Well now, you remember the month of May very well, don't you?

A. Yes.

Q. You remember the month of June 1950 very well?

A. Yes.

Q. You remember all the incidents that have occurred?

A. Yes.

Q. Did you have any pictures taken for any purpose whatsoever in May or June 1950?

A. We may have; we may have.

Q. Do you remember where?

A. No, all I remember was some commercial photographer.

By Mr. Saypol:

Q. Do you remember posing with your family before the camera of that commercial photographer?

A. Yes.

By the Court:

Q. How did you happen to go to that particular com-
[fol. 2031] mercial photographer?

A. Well, I didn't say I went to any particular commercial photographer.

Q. Well, you just remembered posing before a camera?

A. Yes.

Q. How did you happen to get before that camera?

A. Well, my older boy happens to be very much interested in machines of any kind.

By Mr. Saypol:

Q. Is that the eight year old boy?

A. That's right. He is very precocious.

Q. So you took him in to play with the photographer, is that the idea?

The Court: Just a moment.

Mr. E. H. Bloch: I submit that the witness——

Mr. Saypol: ——

The Court: Mr. Saypol, will you wait until I am through?

Mr. E. H. Bloch: I move that Mr. Saypol's remarks be stricken from the record.

The Court: They will be stricken.

By the Court:

Q. I asked you how did you happen to get to that particular photographer? Who recommended that particular photographer?

A. Nobody ever recommen-ed any particular commercial photographer to us.

[fol. 2032] Q. How did you happen to go to that particular one?

A. We, as I tried to explain, my older child was interested in machines, among other things. We, it was our wont to go for walks with them and to stop and look at anything of interest, anything that might be of interest to the children, and very often, as we take these walks, the older child particularly, would ask, "Oh, come, let's go in here and get our pictures taken." That is—I think kids generally do that kind of thing.

Q. How many times would you say he had done that?

A. Oh, several times. We happen to be what you would call "snapshot hounds" and that bunch of pictures that you saw there doesn't nearly represent all the snapshots and all the photos that we have had made of ourselves and the children all through our lives.

Q. Then you remember, you say, having had some photographs taken in May or in June?

A. It may have been that time. I am really not sure. There were so many frequent occasions when we dropped into these places.

Q. I am talking about the very last ones that you had taken?

A. Well, I can't say what I don't recall and I really don't recall specifically.

[fol. 2033] By Mr. Saypol:

Q. Well, we have it now at least that the photographer, the commercial photographer, was within walking distance of your home at 10 Monroe Street; is that right?

A. Well, there were times we took walks and took photographs elsewhere.

Q. We are now talking about the time that you last remember, within the two years, when you went with your family to a commercial photographer to have a picture taken or pictures?

A. But I didn't say that we took a walk this particular time to this particular place.

Q. Where was it?

A. I wouldn't know.

The Court: Is this a convenient place to recess for lunch, Mr. Saypol?

Mr. Saypol: All right.

The Court: We will recess until 2.20.

(Recess to 2.20 P.M.)

[fol. 2034] Afternoon Session

Ethel Rosenberg, resumed:

The Court: Before you begin, I want to make certain of the fact that you understood my ruling on Exhibit 31, Mr. Bloch. I have not admitted Government's Exhibit 31 because of any belief on my part that Mrs. Rosenberg had waived her privilege against self-incrimination by testifying as to this matter before the grand jury.

Mr. E. H. Bloch: I see.

The Court: That was not the basis for my admission. The admission of the exhibit was because when shown her signature here, she admitted it was her signature. That was the basis of the admission.

Mr. E. H. Bloch: I understand that.

Mr. Saypol: May I proceed, if the Court please?

The Court: Yes.

Cross-examination Continued.

By Mr. Saypol:

Q. Mrs. Rosenberg, before the noon recess we were talking about the photographs that you took. Do you remember any better now when and where those were taken?

A. Which were taken?

Q. The photographs we were talking about, within the last two years, of the family.

A. Well, they were taken any number of places, any number of times in those two years.

[fol. 2035] Q. Can you think of one place?

A. Yes, I remember one place on Clinton Street.

Q. Clinton and where?

A. That I couldn't say but it was on Clinton Street.

Q. What kind of pictures did you get?

A. Oh, those usual little snapshots.

Q. Did you give any of them to any members of the family, did you show any of them to any members of the family?

A. I may or may not have.

Q. I see. How much did you pay for them or how much did your husband pay for them?

A. Oh, very little. It was this inexpensive kind.

Q. Six cents?

A. It may have been that, I really couldn't say.

Q. $2?

A. I doubt it was $2.

Q. $9, $10?

A. No, nothing like that.

Q. You can't remember when you had pictures taken at any time that cost $10?

A. I saw a couple of pictures made of my children up at some studios.

Q. Where?

A. It's near Fifth Avenue, 39th Street, somewhere like that?

Q. When?

A. I think the older one was six years old——

Q. When did you have the pictures taken?

[fol. 2036] A. What?

Q. When did you have those pictures of your children taken in 39th Street?

A. I say, when the older one was six years old and the smaller one was two, I think.

The Court: That would make it about two years ago, is that right?

The Witness: It must be about it.

Q. What was the photographer's name?

A. Oh, I wouldn't know. That is a studio that employs a lot of different people.

Q. How much did you pay them?

A. I paid one dollar.

Q. Did you show an-body in the family those pictures?

A. Yes, I did.

Q. Who?

A. My mother, my aunt.

Q. Those weren't passport photographs, were they?

A. I never took any passport photographs.

Q. Now do you remember a time in 1945 when your husband told you something about a talk that he had had with your sister-in-law about Davey's stealing from the Army?

A. Yes.

Q. Did you ever tell anybody about that?

A. No, I never did.

Q. Did you ever tell your mother?

A. No.

[fol. 2037] Q. Did you ever tell your brothers?

A. No, I never did.

Q. Did you ever suggest that someone ought to write to Davey and tell him not to do such a thing?

A. Outside of my sister-in-law.

Q. Is that the first time that you ever heard that Davey wanted to steal for money?

A. That's right.

Q. Weren't you worried about that?

A. I was.

Q. But you told nobody about it at all in the family?

A. No, I didn't. I was quite certain that he and his wife could handle their own affairs.

Q. Now then, did you learn sometime in 1950 that the FBI was asking questions about Davey stealing uranium?

A. Yes, I did hear about that.

Q. When did you hear that?

A. Some time after the FBI had actually come to see my brother.

Q. What month would that be in?

A. I couldn't possibly tell you what month.

Q. When you heard that did you remember what your husband had told you before about Davey wanting to steal things from the Army?

A. Well, when I spoke of the incident to my husband, we were discussing the fact that the FBI had been to see my brother about lost uranium, we did kind of recall something about that other incident.

Q. Did you talk about it with your husband?

[fol. 2038] A. A little.

Q. What did you say and what did he say?

A. Well, we just speculated if that was what he really was stealing at that time.

Q. When you heard that the FBI was questioning or had questioned him about the theft of uranium, did you say anything to your husband or did he say anything to you concerning the fact that that might have to do with the atomic bomb?

A. No, not that I can recall.

Q. Did you know in 1950 that Davey had been working on the atomic bomb?

A. Yes, by 1950 I knew it.

Q. On the other hand, you don't recall any conversation with your husband about that?

A. No.

Q. When you heard that the FBI was investigating the theft of uranium and questioned Davey, did you tell anybody else in the family about it?

A. I didn't, no.

Q. Do you know whether your husband did?

A. I really couldn't say.

Q. Did it occur to you that perhaps you ought to talk to Davey about it?

A. Well, it might have occurred to me but I felt that whatever I might have to say on the subject, whatever it might be, would fall on deaf ears by that time.

Q. Why?

A. Because our relationship, my husband's and my

brother's and mine, and my sister-in-law, had been slowly [fol. 2039] deteriorating.

Q. You weren't on good terms with each other because of the trouble in the business, isn't that so?

A. That's right, that's right.

Q. And you or your husband owed Davey a thousand dollars for his stock?

A. I am afraid I am a little hazy when it comes to business, the business matters, the financial arrangements. I really know very little about them.

Q. Did you know how much your husband owed to Schein when Schein had the deal with him?

A. I had some idea of it.

Q. Now we come to the time when your husband told you about this demand of Davey's for $2,000 or a vaccination certificate; do you remember that?

A. Yes.

Q. Did your husband tell you that Davey had said something about wanting to go to Mexico?

A. I can't recall that he did say that.

Q. Did it ever occur to you that Davey wanted to run away?

A. Well, another time—I don't know if it was that time but there was another time, I think, that my husband mentioned something about the fact that Davey had dropped the word "Mexico."

Q. What did you do about it? Did you tell anybody?

A. No, I didn't.

[fol. 2039a] Q. Did you tell your mother?

A. No, I didn't.

Q. Did you tell your sister or your brother—brothers?

A. Brothers; no, I didn't say anything.

Q. In connection with your knowledge of the affairs of Pitt Machine Company, did you have the power to sign checks?

A. I had that power, oh, toward the very end of the business.

[fol. 2040] Q. Now, there came a second conversation which your husband told you about where Davey was really desperate, do you remember that?

A. Yes.

Q. Thinking of all those things that had gone in the past did you tell your mother about it?

A. No, I didn't.

Q. Did you tell anybody else in the family?

A. No, I didn't.

Q. All you said was Ruthie must be nagging him for money again?

A. Oh, I said more things than that.

Q. Well, at the time you said Ruthie was nagging him for money, Ruthie had been in the hospital and had a baby, hadn't she?

A. Possible.

Q. She had been in the hospital before because of some serious burns?

A. That is right.

Q. What was it that made you suggest that maybe Ruthie was nagging him for money? Did you think she wanted it for a hospital bill?

A. Whatever she may have wanted it for, it was common knowledge that Ruthie always nagged Davey about money.

Q. Well, what did she want the money for? Was that discussed?

A. It was not discussed.

Q. But in any event there came a time when you did decide you wanted to do something to help Davey?

A. There never was a case of my having to decide that [fol. 2041] I wanted to help Davey; I had always helped Davey in the past and I continued to feel the same way about anything involving Davey.

Q. Well, I am talking now about the conversation you had with Ruth Greenglass. Isn't that the first time you said something must be done to help Davey?

A. I said something must be done to help Davey numerous times.

Q. What did you do at that time to help Davey?

A. Unfortunately I wasn't able to help him.

Q. Well, did you suggest that perhaps Davey might need a lawyer?

A. Well, I had heard that Davey's brother-in-law had hired a lawyer for him.

Q. At that time Davey was under arrest, wasn't he?
A. Yes.
Q. At that time he was in jail?
A. Yes.
Q. And you said to Ruthie at that time, you plied her with questions as to her health?
A. I plied her with questions as to my brother——
Q. Excuse me, you plied her with questions as to his health, is that right?
A. Yes.
Q. And you also asked how was he standing up in jail?
A. That is right.
Q. You mean, was he talking about you and your husband? Is that what you meant when you asked that?
[fol. 2042] A. Of course not.
Q. Of course you were innocent?
A. Absolutely.
Q. So was your husband?
A. Right.
Q. At that time had you consulted a lawyer yourself?
A. I consulted a lawyer after, sometime subsequent to the time that my husband hired Mr. Bloch. That was the day, the evening of the day that he had been interrogated by the FBI.
Q. In other words, that was on June 16 when he was interrogated, you hired a lawyer, you talked to Mr. Bloch?
A. My husband talked to him that evening.
Q. Did your husband talk with you after he talked with Mr. Bloch?
A. Yes.
Q. Did you talk between each other as to the extent to which you might become involved in this theft of defense materials, defense secrets?
A. We talked about Davey's arrest.
Q. Did you talk at that time about the possibility that perhaps Davey was going to implicate you in this?
A. Well, we did recall that the FBI had mentioned, had spoken to my husband in terms of my brother having implicated us, but frankly we didn't believe them.
Q. A little while ago you said you did everything to help Davey, do you remember that?
A. Yes.

Q. Did you help him join the Communist Party?

[fol. 2043] Mr. E. H. Bloch: I object to the question as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except and I now advise the witness——

A. I refuse to answer.

Mr. E. H. Bloch:—that she can avail herself——

Mr. Saypol: She knows the answer.

Mr. E. H. Bloch: She is a better lawyer than I am no doubt.

By Mr. Saypol:

Q. Go ahead.

A. I am going to refuse to answer on the ground of self-incrimination.

Q. Now that your lawyer has interrupted do you so refuse?

A. That is right.

Mr. E. H. Bloch: I object to that.

Q. Now then, you say the day your husband was interrogated he talked to Mr. Bloch?

A. That is right.

Q. Is that right?

A. That is right.

Q. Did you talk to Mr. Bloch at or about the same time?

A. No.

Q. When did you talk to Mr. Bloch?

A. Oh, some days after that.

Q. When you were talking to Mr. Bloch was your husband there too?

A. At some time he was.

[fol. 2044] Q. Did Mr. Bloch question you at length?

A. Yes.

Q. How long did the questioning take?

A. Well, I didn't spend much time.

Q. Well, did you go over all of these incidents that you have testified to or that your husband has testified to?

A. I can't recall now as to what incidents we may or may

not have discussed at that particular time, but certainly since my arrest we have certainly been over a lot of things.

Q. Well, at the time that you appeared before the grand jury as a witness your husband had been arrested, had he not?

A. Yes.

Q. You had not yet been indicted?

A. That is right.

Q. At that time had you disclosed to Mr. Bloch everything that you knew about the matter of the theft of atomic material or defense secrets?

A. I didn't know anything about the theft of atomic secrets. So how could I discuss it?

Q. Whatever you knew you told Mr. Bloch?

A. Whatever I felt was necessary to discuss with him I discussed with him.

Q. Did you answer all his questions?

A. Certainly.

Q. Did you withhold anything from him?

A. No, I didn't.

[fol. 2045] Q. You were completely frank with him and you told him the truth?

A. That is right.

Q. Did he give you advice?

A. Yes, he did.

Q. Did you follow his advice?

A. In the main I would say I did.

Q. In what respects didn't you follow his advice?

A. He told me to stay away from Ruth Greenglass.

Q. And you didn't?

A. And I didn't.

Q. But you did follow his advice to tell the truth?

A. That's right.

Q. Now, you came before the grand jury on August 7th; do you remember that?

A. Yes, about that time.

Q. And everything you told the grand jury was the truth?

A. Right.

Q. Do you remember having been asked this question and giving this answer:

"Q. When did you consult with your attorney for the first time in connection with this matter?

"A. I refuse to answer on the ground that this may tend to incriminate me."

Do you remember having been asked that and having given that answer?

A. That's right.

Q. Was that the truth?

Mr. E. H. Bloch: Now, if the Court please, I move to strike out the answer—I move that the question be stricken [fol. 2046] out, upon the ground it is incompetent, irrelevant and immaterial. There is no demonstration that there is any prior inconsistent statement made before the grand jury.

The Court: When asked the question here, she gave a time.

Mr. E. H. Bloch: Yes.

The Court: When asked there, she asserted the privilege.

Mr. E. H. Bloch: Is that an inconsistency?

The Court: I am not going to answer your question, but——

Mr. E. H. Bloch: Well, my objection is based upon the fact that I contend it is not an inconsistency.

The Court: Do you also content that that would not be something for the jury to consider on the question of credibility?

Mr. E. H. Bloch: I think, your Honor, that if this witness properly asserted her privilege against self-incrimination, then the jury is to draw no inferences.

The Court: No, I am asking you another question. Supposing a question is asked today which the witness answers, the same question asked previously which the witness refused to answer on the ground that it may tend to incrimi- [fol. 2047] nate her; now, my query is, might not that be something which the jury would consider on the question of credibility?

Mr. E. H. Bloch: Just give me a chance to think for one second, because there is a line of cases and I don't want to make any assertions which are contrary to what I consider the law to be. I would say this in all frankness, that there is a dubiety in my mind as to whether or not the jury could draw any inference by reason of a witness' re-

fusal to answer questions in which there is an assertion of self incrimination, whether made at one time or another, or I will even be more comprehensive at any time. That is my idea of the law, and may I assure your Honor that I still have a little doubt in my mind as to whether or not I am asserting the law properly.

I think the cases are fuzzy about it, but it is my duty to object because I feel that this witness is entitled to the privilege and my legal advice.

The Court: Proceed.

Q. Do you remember having been asked this question and giving this answer:

"Q. That may incriminate, the fact that you talked with your lawyer?

A. That was my answer."

Do you remember that question and do you remember [fol. 2048] that answer?

A. Yes, I remember.

Q. Was that the truth?

Mr. E. H. Bloch: Same objection, your Honor.

The Court: Overruled.

A. Was what the truth? That I answered the question that way?

Q. That you answered that to disclose whether you had consulted with your lawyer about this matter would incriminate you?

A. All I can say, Mr. Saypol, at this time, is that I don't remember what reason I may or may not have had at that time for giving such an answer.

Q. Might it have been an untruthful reason?

A. No.

By the Court:

Q. The fact of the matter is that you have no objection today to giving the answer to that?

A. That's right.

Q. And what was your answer today as to when you consulted your lawyer?

A. Sometime after my husband had seen him, the day, the evening of the day he was interrogated by the FBI.

Q. And today you feel there is nothing incriminating about that answer?

A. No.

Q. But at that time, before the grand jury, you did?

A. I must have had some reason for feeling that way.

[fol. 2049] Q. Now, what was the reason?

A. I couldn't say at this time.

The Court: In your own interest, I think you ought to think about it and see if you can give us some reason.

The Witness: I really couldn't say.

By Mr. Saypol:

Q. At that time, when you were before the grand jury, had you discussed this case with your brother, David Greenglass?

A. No.

Q. Not at all?

A. Not at all.

Q. That is, from the time when you first heard that he was being investigated for the theft of atomic secrets, up to the time when he was arrested?

A. That's right.

Q. You never talked to him about it at all?

A. No, I did not. I didn't see him.

Q. Do you remember having been asked this question before the grand jury and giving this answer:

"Q. Did you discuss this case with your brother, David Greenglass?

A. I refuse to answer on the ground that this might tend to incriminate me."

Was that question asked and did you give that answer?

A. Yes.

Q. Was that answer true?

[fol. 2050] Mr. E. H. Bloch: Just a moment. I just want to reserve my objection to all of these questions with relation to her testimony.

The Court: No, no, I am going to ask you to take specific objection.

Mr. E. H. Bloch: All right, then I will make specific objection to this question upon the ground it is incompetent, irrelevant and immaterial and no proper cross examination,

especially in light of the answers that the witness has already given.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

The Witness: I would like to answer that question.

Q. Will you please tell me whether the answer, when you gave it to the grand jury as to whether or not you had spoken to your brother, David Greenglass, to the effect that the answer might tend to incriminate you, was true then or false?

A. It was true, because my brother David was under arrest.

Q. How would that incriminate you, if you are innocent?

Mr. E. H. Bloch: Just a moment.

A. I didn't have——

Mr. E. H. Bloch: Wait a second. I object to the form of [fol. 2051] the question.

The Court: Let her give her own reasons as to why she answered it that way.

Mr. Saypol: I am willing to have her explanation, if the Court please.

The Court: Yes.

A. It wouldn't necessarily incriminate me, but it might ——

Q. You mean——

A. —and as long as I had any idea that there might be some chance for me to be incriminated I had the right to use that privilege.

By the Court:

Q. At any rate, you don't feel that way about that question today, do you? You have answered when you talked to your brother, Dave, right here in this courtroom, haven't you?

A. But I didn't talk to my brother, David.

The Court: What was the question there, Mr. Saypol? What was the question, please?

Mr. Saypol: I am asking——

The Court: No, no, the question you read before the grand jury, I want to know that question.

Mr. Saypol: (Reading):

"Q. Did you discuss this case with your brother, David Greenglass?

A. I refuse to answer on the ground that this might tend [fol. 2052] to incriminate me."

By the Court:

Q. You have no objection to answering that question here in the courtroom?

A. I have already answered that question, that I did not discuss it.

Q. And you don't feel that giving that answer will in any way incriminate you here today; is that right? That is why you have answered it?

A. That's right.

By Mr. Saypol:

Q. As a matter of fact, a truthful answer at that time would have been that you hadn't talked to him, would it not?

A. Well, but self-incrimination——

Mr. E. H. Bloch: Wait——

A. (Continuing) Self-incrimination is not a truthful answer.

Mr. E. H. Bloch: Wait. I just want to record my objection.

The Court: I will sustain the objection to that particular question.

Q. As a matter of fact, at the——

The Court: Now, let me ask a question. If you had answered at that time that you had not spoken to David, for reasons best known to you, you felt that that would incriminate you?

The Witness: Well, if I used the privilege of self-incrimi- [fol. 2053] nation at that time, I must have felt that perhaps there might be something that might incriminate me in answering.

The Court: All right, proceed.

By Mr. Saypol:

Q. As a matter of fact, at that time you didn't know how much the FBI knew about you and so you weren't taking any chances; isn't that it?

Mr. E. H. Bloch: I object to the form of the question.

A. I was using——

Mr. E. H. Bloch: Wait a second.
The Court: Overruled.
Mr. E. H. Bloch: I respectfully except.
Mr. Saypol: May that question be answered yes or no?
The Court: Yes, first answer it yes or no, then you can explain.
The Witness: Will you please repeat the question?
Mr. Saypol: Mr. Reporter, will you please read the question?

(Question read.)

A. I didn't know what the FBI knew or didn't know.
Q. Of course you didn't so you weren't taking any [fol. 2054] chance in implicating yourself or your husband?

Mr. E. H. Bloch: Now, if the Court please——

A. I was using my right——

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. E. H. Bloch: Wait a second. I object to this entire line of questions as incompetent irrelevant and immaterial and I now move for a mistrial upon the ground that Mr. Saypol is persisting in asking questions, the import of which can only prejudice this defendant in the eyes of the jury, and it has no probative value whatsoever.
The Court: Mr. Bloch, you know the purpose of cross-examination, I take it?
Mr. E. H. Bloch: I do.
The Court: You know the way questions ordinarily are framed in cross-examination?
Mr. E. H. Bloch: I do, sir.
The Court: They don't expect a witness to volunteer,

and the cross-examiner has to phrase his questions in such a way as he thinks, with propriety, he can elicit the information which he thinks should be elicited. I think it is proper cross-examination. Your motion for a mistrial is denied. Your objection is overruled.

Mr. E. H. Bloch: I respectfully except, your Honor.

[fol. 2055] Mr. Saypol: Perhaps we may have a blanket objection so that Mr. Bloch won't interrupt me and try to interrupt the trend of my examination?

The Court: No, I think, with respect to this particular examination as to the questions before the grand jury, I prefer to have the specific objection.

Mr. Saypol: May we have an answer to the question now?

The Witness: I am sorry, but I don't remember the question.

Mr. Saypol: Mr. Reporter, will you go back, please?

(Question read.)

A. I didn't know whether I was taking any chances or I wasn't taking any chances. I was answering the questions as I saw fit, and if I felt that anything might tend to incriminate me, I so said.

Q. Would you explain, please, how the fact of whether or not you had talked with David Greenglass regarding this matter applied to possible incrimination, if you had had nothing to do with his activities?

A. I said——

Mr. E. H. Bloch: Wait a second.

The Court: I have asked that question. I have asked that question, Mr. Saypol.

[fol. 2056] Mr. Saypol: May we have the answer again, if the Court please?

The Court: No, I think she has answered it. She said that she just thought anything which in her mind might lead in some direction, she had a right.

By Mr. Saypol:

Q. Do you remember having been asked, or was this question asked of you and did you give this answer:

"Q. Do you recall ever having discussed the work of your brother, David Greenglass, the work that he was doing at Los Alamos, New Mexico?

A. I decline to answer on the ground that this might tend to incriminate me."

Was that question asked and did you give that answer?

A. Yes.

Q. Would you care to state how that would incriminate you?

Mr. E. H. Bloch: Just a second. I object to this question upon the grounds that if this witness would ever answer that question, it would vitiate and nullify all the rights that every citizen is entitled under the Fifth Amendment.

The Court: I am going to sustain your objection.

Q. Was that answer true?

[fol. 2057] The Court: No, no, I am sustaining the objection.

Mr. Saypol: I just wanted——

The Court: Oh, you just want to ask whether the——

Mr. Saypol: Whether the answer that was given at the time was the truth.

The Court: All right.

A. Well, if you mean, did I answer in that way? Yes, I did. You have the record there.

Q. Was that a truthful answer?

The Court: She said everything that she told the grand jury was true.

Q. You say that to this question, too? Was that a truthful answer?

The Court: What question?

Mr. Saypol: The one I just asked, if the Court please.

The Witness: I don't understand this.

The Court: Are you asking a question anew?

Mr. Saypol: Yes, I have stated the question. You see, if your Honor please, we have had a categorical denial here on the part of this witness in the greatest detail, and I am prepared to circumscribe my examination only to the extent that there was inquiry as it covers the subject generally. [fol. 2058] Of course, there has been interspersed here without deviation to every question an objection on every imaginable, unsupported ground—that is my version of it.

The Court: Now, that is your version. I will now tell the jury that they will draw no inferences whatsoever from a lawyer objection. That is his prerogative. That is what he is supposed to do, if he thinks he should object.

Mr. Saypol: I think on the general pattern of the case I have a right to proceed in continuity without interruption, to show the contract between the witness's position before the grand jury and her position here, and the jury can best judge, on the panorama that I paint as I go along.

The Court: I permitted you to do that with respect to several questions already. Now, as to this broad question, I don't remember that she was asked that specific question here, and whether or not that question is inconsistent with something she was asked here. I can't determine just from that question.

Mr. Saypol: I will go on then with the next one.

Q. Do you remember having been asked this question and having given this answer:

"Q. Do you recall a furlough visit that your brother [fol. 2059] made to New York in the late fall or first part of January, 1944, 1945?

A. I decline to answer on the ground that this might tend to incriminate me."

Was that answer true when you gave it on August 7th?

Mr. E. H. Bloch: I assume, your Honor, I have got a standing objection to this entire line of inquiry?

The Court: All right, objection overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: May we have an answer?

The Court: Yes; may we have an answer?

The Witness: I don't understand the question.

The Court: All right. Now, let me put it to you this way, and maybe we can get along with this.

By the Court:

Q. You did answer that question here in court, didn't you? You did remember that furlough visit?

A. Yes.

Q. So that you had no objection here upon any grounds, whether it is incrimination or anything else, to answering that question?

A. That's right.

Q. However, before the grand jury you did assert your privilege, did you not?

A. Yes.

Q. He wants to know what the reason for it was at that time.

A. The only reason was that my brother was under ar- [fol. 2060] rest.

By Mr. Saypol:

Q. Is that the only——

By the Court:

Q. You mean, you didn't feel it would incriminate you?

A. Well, if I answered that I didn't want to answer the question on the grounds that it might incriminate me, I must have had a reason to think that it might incriminate me.

By Mr. Saypol:

Q. Well, that reason was based on the advice that your lawyer had given you, was it not?

A. My lawyer had advised me of my rights.

Q. Did your lawyer tell you that you had a right to refuse to answer any and all questions before the grand jury?

A. No.

Q. He advised you only on the basis of what you told him?

A. He advised me as to my rights, but he also advised me it was entirely up to me to decide, on the basis of what the question was, whether or not I thought any answer might incriminate me, and I so used that right.

Q. You weren't making those answers because of a concern that you had about incriminating your brother, were you?

A. I can't recall right now what my reasons were at [fol. 2061] that time for using that right.

Q. Well, the right, as you expressed it, was that it might incriminate you; you said, "It might incriminate me." Those were your words, were they not?

A. Yes.

Q. All right, then your concern solely was as to whether or not you might be incriminated; isn't that so?

Mr. E. H. Bloch: I would have no objection to the question, I mean in the form, I mean if the word "so" were out. The witness may have many reasons.

The Court: Go ahead.

A. I said before and I say again, if I used that right, then I must have had some reason or other. I cannot recall right now what that reason might or might not have been, depending on the different questions I was asked.

The Court: Has something transpired between the time you were questioned before the grand jury and the date of this trial, which makes you feel that your answers at this time, at the trial, to those particular questions are not incriminating, and if so, what is it?

The Witness: I am afraid I don't get that.

The Court: All right.

[fol. 2062] Q. You perhaps know what it means to incriminate oneself. Do you know what it meant?

A. Oh, I knew what it meant, yes.

The Court: All right, Mr. Saypol, let us get along with this.

Mr. Saypol: I withdraw what I just said.

Q. Do you remember this question and this answer:

"Q. Did you invite your brother David and his wife to your home for dinner? I mean during the period while he was on furlough in January 1945?

"A. I decline to answer on the ground that this might incriminate me."

Do you remember giving that testimony?

A. Yes, I remember.

Q. Was it true at the time you gave it? Yes or no.

A. It is not a question of it being true.

Mr. Saypol: I would like to ask now that I have a categorical answer.

The Court: Yes, will you answer that, please?

Q. Yes or no.

A. What is the question?

By the Court:

Q. Was it true when you said that, that you refused to answer because it would incriminate you?

A. I said it might tend to incriminate me.

Q. Was that true?

[fol. 2063] Mr. Saypol: Just a minute, before you answer that, let me read the question and answer again.

The Court: Oh, let her answer that, Mr. Saypol. Let her answer that. You are spending a lot of time on it.

Mr. E. H. Bloch: I just want to interpose an objection, your Honor.

The Court: Have you thought of another ground for an objection?

Mr. E. H. Bloch: I think, your Honor, that the method of trying to import an unlawful act to a person who has asserted the privilege against self-incrimination destroys the privilege and undermines and takes away the person's right under the Fifth Amendment, and I object to this entire line of inquiry because inferences may be drawn which are not warranted under the law or under the facts.

The Court: Mr. Bloch, that is not the problem here. Nobody is seeking to take away, and you know very well by the way this trial has been conducted that the privileges that have been asserted here, there have been no rulings directing the witness to answer.

Mr. E. H. Bloch: Correct. When I say taken away——

The Court: However, when a witness freely answers [fol. 2064] questions at a trial, the answers to which, the answers to the very same questions to which the witness had refused to answer previously upon a ground assigned by that witness, I ask you, is that not a question then for the jury to consider on the question of credibility? Nobody is seeking to destroy any privilege.

Mr. E. H. Bloch: May I just answer it in one sentence? I submit that I disagree with your Honor's conception of the law, but I would like to explain very clearly, when I said seeking, maybe my formulation was unhappy; what I meant was that the objective effect of it was to vitiate the rights.

The Court: But the witness herself has vitiated by giv-

ing answers to them at the trial, answers to these very questions.

Mr. E. H. Bloch: Well then, I submit, your Honor, that there is a failure to make, and I think I am putting my finger on the heart of this thing—there is a failure here to distinguish between the circumstance where a witness involuntarily appeared before a tribunal and is sworn to testify as in response to a subpoena, as in the case here of a grand jury proceeding, and a case where the witness willingly comes and takes the stand and testifies.

The Court: Where is the witness willingly——

Mr. E. H. Bloch: Here. This witness has voluntarily [fol. 2065] taken the stand here. There was no obligation on her part to take the stand, your Honor.

The Court: Proceed.

By Mr. Saypol:

Q. Will you now answer the question yes or no?

The Court: And I have given the witness every opportunity to explain, indeed I have sought an explanation if she could give it to me as to anything that occurred that caused this change.

Mr. E. H. Bloch: I have no quarrel with the Court, but——

The Court: Oh no, no, I know you have no quarrel with the Court; it wouldn't do you any good if you did.

Mr. E. H. Bloch: But I disagree with the Court on the question of law.

(Record read beginning with "Q. Do you remember this question and this answer: 'Did you ever invite your brother David and his wife to your home for dinner? I mean during the period while he was on furlough in January 1945' " and ending with the answer "It is not a question of it being true.")

Mr. Saypol: Now may the witness be directed to answer my question?

The Court: Yes.

The Witness: Well, my husband——

[fol. 2066] Q. Yes or no, if the Court please.

The Court: Please, can you answer yes or no?

The Witness: No.

The Court: All right. Answer it as you think you ought to.

The Witness: My brother had been arrested. My husband had been arrested.

Q. On August 6th?

A. My husband had been arrested on July 17 and I had been subpoenaed to come before the grand jury. It was not for me to state what I thought or didn't think the Government might or might not have in the way of accusation against me. I didn't have to state my reason, but I did feel that in answering certain questions I might be incriminating myself until I exercised my privilege.

Q. What you are saying is that you were under no compulsion to confess your guilt in respect to this conspiracy?

A. I had no guilt——

Mr. E. H. Bloch: Just a moment, please.

The Court: She has answered.

A. (Continuing) I had no guilt to confess.

Q. Were you asked this question and did you give this answer:

"Q. Do I understand you are going to decline to answer [fol. 2067] all questions that I ask you?

A. No, no, I won't decline to answer all questions. It depends on the questions."

Did you say that?

A. Yes, I did.

Q. When you said it depends on the questions, you meant it depends on whether or not the question and the answer that you gave would tend to incriminate you, is that right?

A. That is right.

Q. You testified here today in response to questions from your counsel that the first time you saw Harry Gold was in this courtroom, is that so?

A. That is right.

Q. Do you remember having been asked this question and giving this answer:

"Q. Have you ever met Harry Gold? A. I decline to answer on the ground that this might intimidate me, incriminate me, I mean."

Did you give that testimony at the time?

A. I gave that testimony.

Q. Was it true, knowing Harry Gold would incriminate you?

A. Well, I felt at the time that it might.

Q. Had you ever heard of Harry Gold at the time before——

Mr. E. H. Bloch: I object to the form of the last question. [fol. 2068] The Court: Ask whether she thought at that time knowing Harry Gold would tend to incriminate her.

Mr. E. H. Bloch: I don't think that is the way the question was phrased.

The Court: That is the way the question was phrased.

Mr. E. H. Bloch: All right, if Mr. Saypol will take the Court's form of it.

A. At that time I felt that knowing Harry Gold might incriminate me.

Q. Had you ever seen him before?

A. No, but I had seen pictures in the newspapers and I had read of his testimony in other trials.

Q. You testified that you had never seen him before and never had anything to do with him before, didn't you?

A. That is right.

By the Court:

Q. You read of his testimony in other trials in August? Did you say?

A. Well, I read of his arrest and I read that he was a self-confessed spy.

Q. You don't mean that you read of his testimony?

By Mr. Saypol:

A. No.

Q. Don't you know as a matter of fact that Mr. Harry Gold never testified in court before the month of November [fol. 2069] 1950?

A. Well, I know that now.

Q. Well, do you care to explain how a denial of that on your part at the time that question was asked, a denial of the fact that you knew Harry Gold could possibly incriminate you?

Mr. E. H. Bloch: Now, if the Court please——

A. I made no such denial.

Mr. E. H. Bloch: Wait, wait, please, if I get up.

The Witness: I am sorry.

Mr. E. H. Bloch: I object to this question upon the ground it is incompetent, irrelevant and immaterial, and I submit further——

The Court: All right. You need not give me any more reasons. I will sustain the objection because I think we have her explanation as to all of these questions, as to why she answered as she did. So, Mr. Saypol, you need not ask each particular question.

Q. Do you remember being asked this question and giving this answer:

"Q. You don't deny that you met Harry Gold?

"A. I gave my answer. I decline to answer on the ground that it might tend to incriminate me. That was my answer."

Do you remember that question and answer?

A. Yes, I do.

[fol. 2070] Q. The next question was:

"Q. That was your answer to the first question and the second question was, you don't deny that you met Harry Gold?

"A. I decline to answer on the ground that this might tend to incriminate me."

Is that the testimony you gave at the time?

A. Yes, I gave that testimony.

Q. Was that truthful?

A. When one uses the right of self incrimination one does not mean that the answer is yes and one does not mean that the answer is no. I made no denial. I made no assertion that I did know him. I simply refused to answer on the ground that that answer might incriminate me.

By the Court:

Q. But you did answer it here in court, isn't that true?

A. That is right.

Q. And your answer here was that you never met him until he took the witness stand?

A. That is correct.
Q. So that you didn't assert any privilege with respect to that here in this courtroom?
A. No.

By Mr. Saypol:

Q. Were you asked this question and did you give this answer:

"Q. Have you ever talked with your brother David about [fol. 2071] his activities at Los Alamos?
"A. I decline to answer on the ground that this might tend to incriminate me."
Was that testimony given by you?

A. Yes.
Q. Was it truthful?
A. I have already answered.
Q. The next question

Mr. Saypol: I am going to go on quickly now. I just want to make the record. I know what the answer is going to be.
Q. "Have you ever seen any sketches that he made while he was working at Los Alamos?
"A. I decline to answer on the ground that this might tend to incriminate me."
Was that testimony given at the time by you?
A. Yes.
Q. Truthful?
A. I explained the reason for my answering that way.
Q. Do you care to answer it yes or no?
A. It can't be answered yes or no.
Q. You mean he might have shown you sketches?
A. I didn't say that.
Q. Do you remember this question and this answer:

"Q. Were you present when he gave information to your husband, that is when David Greenglass gave information to your husband which he had obtained from Los Alamos?
[fol. 2072] "A. Will you repeat the question, please?
"(Question read by the reporter.)

"Q. Were you present when he gave information to your husband, that is when David Greenglass gave information to your husband which he had obtained from Los Alamos?

"A I decline to answer on the ground that this might tend to incriminate me."

Did you give that testimony at the time?

A. Yes, I gave that testimony.

Q. Was it truthful? Yes or no.

A. I have already answered. It can't be answered yes or no.

Q. Now, you came back before the grand jury on August 11th, didn't you?

A. Sometime after the first time.

Q. Did you talk to your lawyer between August 8th and August 11th?

A. I must have.

Q. Do you remember having been asked this question and giving this answer:

"Q. I believe you had counsel?

"A. Yes.

"Q. And you had been advised by your counsel as to your rights?

"A. Yes.

"Q. That counsel is Emanuel Bloch, is that correct?

"A. Yes."

Do you remember that testimony?

A. Yes.

Q. Do you remember having been asked this question [fol. 2073] and giving this answer:

"Q. Do you know whether your husband is or was in any way affiliated with the Soviet Union?

"A. I decline to answer on the ground that this might tend to incriminate me."

Did you give that testimony?

A. Yes.

Q. Would that testimony tend to incriminate you?

The Court: Well now, wait a minute.

By the Court:

Q. You did answer that here in court, didn't you? You said your husband was not in any way affiliated?
A. That is right.

By Mr. Saypol:

Q. Was the answer truthful at the time you gave it?
Mr. E. E. Bloch: Objected to, your Honor.
The Court: She has already answered.
Q. Were you asked this question and did you give this answer:

"Q. Did you ever discuss with Ruth Greenglass the work which her husband was doing at Los Alamos during the war?
"A. I decline to answer on the ground that this might tend to incriminate me."
Was that testimony given by you at the time?

A. You have the record. Of course it is the testimony. [fol. 2074]Q. Was it the truth?
A. I have already answered that.
Q. What is your answer now?
A. Would you please repeat the question?

(Last several questions and answers read.)

The Witness: Well, I remember now that when I visited my husband some time before I was myself arrested he told me that he had met my brother David at the West Street House of Detention, and in reply to some discussion about recreation periods, that is, as to when my brother wanted his recreation period on the roof and when my husband wanted his, because they intended to keep them separated—in reply to that my husband told me that David had acted very hostile toward him, and had said, "If he comes anywhere near me I will knock his head off," or words to that effect.
Q. Is that the first time he ever said that?
A. No. He had said that to my husband a number of times before, before either of them was arrested.
Q. You just remembered that now, is that right?
A. Oh, I have remembered it before, but in trying to

answer the question put to me I am remembering that perhaps that influenced me in answering the way I did in front of the grand jury.

[fol. 2075] Q. But you say you were not guilty of any of these charges and you never participated in this?

A. That is right.

Q. In these activities?

A. That is right.

Q. Did you tell your lawyer that at the time it occurred? Did you tell that to Mr. Bloch?

A. About what?

Q. What you just said about David being hostile, as you put it, threatening to knock his block off? Is that what he said?

A. Yes.

Q. He didn't mean Mr. Bloch, did he?

Mr. E. H. Bloch: Maybe he did.

A. Is that a question?

The Court: Let us get along. Don't answer that.

Q. Do you remember having been asked this question and giving this answer:

"Q. Were you ever present at a discussion with Ruth Greenglass during which the topic was the work which her husband, David Greenglass, was doing at Los Alamos during the war?

"A. I decline to answer on the ground that this might tend to incriminate me."

Did you give that answer? Was that question asked and did you give that answer?

A. Yes.

[fol. 2076] Q. Was it the truth?

A. Well, I just explained to you what may have influenced me.

The Court: All right.

The Witness: To assert my right of self-incrimination.

Q. Do you remember having been asked this question and giving this answer——

The Court: I don't think this serves any purpose, Mr. Saypol.

Mr. Saypol: I have just a few more which run down the pattern of denials on the stand. Two or three more minutes.

The Court: All right.

Q. "Q. Did you ever hear your husband, Julius, discuss with Ruth Greenglass the work which her husband, David Greenglass, was doing at Los Alamos during the war?

"A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. Yes.

Q. Was it truthful?

The Court: Same answer?

The Witness: Same answer.

Q. "Q. Did you ever discuss with David Greenglass the work which he was doing at Los Alamos during the war?

[fol. 2077] "A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. Yes.

Q. Was it truthful?

A. The same answer.

Q. Do you remember having been asked this question:

"Q. Did you ever hear David Greenglass discuss his work in connection with the atom bomb and nuclear fission?

"A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. You are reading it. Of course it is the testimony.

Q. Was it truthful?

A. The same answer.

Q. Is it possible that you might have discussed that with David Greenglass?

By the Court:

Q. Well, your testimony here was you did not?

A. That is right.

Q. And you did not assert any privilege as to that particular question when put to you here in court?
A. No.

By Mr. Saypol:

Q. In spite of the fact that you have denied these things here in court, does this testimony perhaps refresh your recollection that perhaps you did talk with Greenglass in [fol. 2078] 1944 and 1945 about the atom bomb and nuclear fission and things like that?
A. It couldn't possibly refresh my recollection because none of these things took place.
Q. You denied here that you knew Anatoli Yakovlev, is that right?
A. Yes.
Q. Were you asked that question before the grand jury?
A. I don't recall.
Q. "Q. Do you know Anatoli Yakovlev?
"A. I decline to answer on the ground that this might tend to incriminate me."

Were you asked that question and did you give that answer?

A. Now that you read it, I suppose they did ask me that, and I did answer that.
Q. And yet you had never met Yakovlev in your life?
A. That is right.
Q. Would you care to explain how you might be incriminated on the basis of that question and answer?
A. It is not necessary to explain the use of self-incrimination.
Q. Do you recall having been asked this question and giving this answer:

"Q. Would you care to attempt to identify his picture?
"A. I would not care to attempt."
Is that your testimony?

A. Yes.
[fol. 2079] Q. Why didn't you want to care to attempt to identify Yakovlev if you never saw him before or had never seen him before?

Mr. E. H. Bloch: I object to the question on the ground that if the witness purported to answer this question it would vitiate her privilege.

The Court: Well, you refuse to answer because of your privilege?

The Witness: Yes.

The Court: I want the jury to understand that I am permitting this question, as I said before in answer to counsel's objection, on the question of the credibility of the witness. The witness has answered the question here in court and on previous occasion had asserted privilege. As I said before, there is no interest to be drawn from the assertion of privilege against self-incrimination, but it is something the jury may weight and consider on the question of the truthfulness of the witness and on credibility, and in the charge proper, my main charge, I will have more to say about how you judge the credibility of witnesses.

Mr. Saypol: I shall ask a group now in order to save time.

By Mr. Saypol:

Q. Do you remember being asked these questions and to each of them giving the same answer, refusing to answer on the ground that the answer might tend to incriminate [fol. 2080] you:

"Q. Do you know whether your husband knows this Yakovlev?"

The Court: I think we have had enough on this subject, Mr. Saypol, and for this particular purpose, and the purpose for which it is limited, I don't see anything would be added by constant questioning and more assertion of the privilege. So I am going to ask you to go on to another topic.

Mr. Saypol: May I ask an omnibus question?

Q. Is it not a fact, Mrs. Greenglass, that before the grand jury——

A. Mrs. Rosenberg.

Q. Excuse me, I am sorry. You are the defendant here. Is it not a fact that after consultation with your lawyer, in the course of your two appearances before the grand jury you refused to answer any questions asserting your

privilege against self-incrimination insofar as you were asked questions relating to the employment, the activities of your brother David at Los Alamos in 1944 and 1945, insofar as concerned his wife, insofar as concerned Harry Gold and insofar as concerned Yakovlev, and insofar as concerned your association and your husband's association in connection with these people whom I have mentioned relating to the theft from Los Alamos of material relating to the development and production of the atomic bomb and [fol. 2081] the objective of delivery to the Soviet Union?

Mr. E. H. Bloch: Of course, the same objection goes to this question, your Honor, with the additional one, that all of these questions have already been asked and already been answered, and this is merely a composite——

The Court: Well, I cut him off from asking any more questions. So I will permit this general question.

A. It is a fact that I exercised my privilege against self-incrimination wherever I felt the need to do so.

[fol. 2082] By the Court:

Q. But you did not exercise that privilege here in court with respect to that same subject matter?

A. No.

By Mr. Saypol:

Q. That need you felt was necessary for assertion by you so that you would not incriminate yourself, is that right?

A. I said that I used the right against self-incrimination.

Q. Is it not a fact that at the conclusion of the grand jury proceeding at which you were present as a witness this was said to you:

"Q. Is there anything else you want to tell us about this entire matter?

"A. No.

"Q. Any statement you want to make to the jury?

"A. No."

Did that occur?

A. Yes.

Q. Did you make any statement?

A. No.

Q. Did you make any answer?

A. No.

Q. You knew by that time that your husband was under arrest in connection with this crime?

A. Yes, he was under arrest.

Q. You knew at that time, too, that you were suspect, did you not?

A. I really didn't know if I knew it.

Q. Didn't you think it appropriate at that time to make [fol. 2083] make a complete statement such as you have made here denying any possible connection or complicity in this matter?

A. I had gone to the grand jury to answer any question they might put to me and that I did. It didn't occur to me that it was something I was supposed to do, to make any kind of statement.

Q. Without exception you have refused to answer these questions because of the privilege which you had been advised you enjoyed?

A. Not without exception.

Q. You mean you told the name of your lawyer——

The Court: All right, we have that.

Mr. Saypol: Let me ask this: —

Q. Without going into detailed questions in that regard, is it not a fact that with respect to every question that was asked of you at that grand jury relating to membership or activity or participation by your or your husband, the defendant, David Greenglass, the defendant, or Ruth Greenglass in the Communist Party, you similarly asserted your privilege against incrimination, is that so?

A. I asserted my privilege against self-incrimination.

Q. In respect to those matters concerning membership or activity or participation in the Communist Party by those I have mentioned?

The Court: You don't assert any objection to this? You [fol. 2084] have no objection to this particular question (addressing Mr. Bloch).

A. I don't recall that there were any such questions asked me concerning my brother or his wife.

The Court: Well, now, I don't want these questions read, Mr. Saypol.

Mr. Saypol: Well, I might take as long as I have taken to this point. So I will omit them. I think the record is adequate. I think I have had enough questions.

Mr. E. H. Bloch: With my father's permission, may I take this witness on the redirect?

The Court: Instead of your father?

Redirect examination.

By Mr. E. H. Bloch:

Q. Did you come to the grand jury down here in the Federal Building in the early part of August? I believe the 7th and 11th, voluntarily, or were you subpoenaed?

A. I was subpoenaed.

Q. At the time you exercised this privilege against self-incrimination in response to certain questions did you believe that you were guilty of any crime of espionage?

A. I certainly did not.

Q. Were you at any time— —

The Court: And you don't believe today——

Q. And you don't believe today that you are guilty of any [fol. 2085] crime?

A. I don't believe any such thing.

The Court: So there was no difference in your position then than there is today?

Mr. E. H. Bloch: I am coming to that, your Honor.

The Court: Is that right?

The Witness: Well, I didn't believe I was guilty then. I don't believe it today. As a matter of fact, I know I wasn't guilty then, and I know I am not guilty now.

The Court: The point is. you answered these questions at the trial and refused to on the ground that it would tend to incriminate you before the grand jury.

The Witness: As I said before, I can't remember now what reasons I might or might not have had to use the ground of self-incrimination then.

The Court: All right.

By Mr. E. H. Bloch:

Q. Had you heard from your husband or from anybody at the time you went down to the grand jury here in August,

1950, that your brother David had accused your husband of conspiracy with him to engage in espionage?

A. My husband told me the day he was interrogated by the FBI that they had said that my brother had tried to implicate him.

Q. And were you aware at the time you went down to the grand jury that your brother was trying to implicate [fol. 2086] you?

A. (No answer).

Mr. Saypol: While the witness is thinking, just a minute, perhaps we will object to the question as to form on the use of the word "implicate."

The Court: I will overrule it. What was the answer?

A. I may very well have been so aware.

The Court: And you were aware of it here at the trial, too?

The Witness: Well, I couldn't help be aware of that.

The Court: Very well.

Q. Did you have any fear at the time you went down to the grand jury in August on these two occasions in 1950 that your brother was trying to involve you in the crime of espionage?

A. Would you please repeat that?

The Court: He wants to know whether you had any fear that he was trying to implicate you when you went before the grand jury.

The Witness: I must have had that fear.

Q. When you testified before the grand jury here in August, 1950, whether it be on the first occasion or whether it be on the second occasion, were you ever brought down before any Judge of the Federal Court in this building, and did the prosecuting attorney or the attorney who was presenting the evidence to the grand jury or any member of Mr. Saypol's staff, ever attempt to compel you to answer [fol. 2087] any of these questions?

A. No.

Mr. E. H. Bloch: That is all.

Recross-examination.

By Mr. Saypol:

Q. If you had the fear that you told Mr. Bloch about, why didn't you at that time tell the same story to the grand jury that you have told here to this jury rather than take refuge in your constitutional privilege?

A. Whatever reasons I may have had, I had them, and therefore I felt I had to take refuge.

Q. You profess a love for your brother, don't you?

A. You mean I once had a love for my brother.

Q. You mean that that has changed?

A. I would be pretty unnatural if it hadn't changed.

Q. Did you have the love to which you have testified on August 7th and August 11th when you appeared before the grand jury?

A. I certainly did.

Q. Did you have an apprehension then of what your brother was facing as a result of his arrest and the prosecution on the charges?

A. I understood what he might face.

Q. It was serious, was it not?

A. Yes.

Q. And by that time you were aware of the fact, as you said, that he was trying to implicate you and your husband, is that so?

A. Yes.

Q. Can you give me any better reason than being aware [fol. 2088] of these things, as you have just said, why you didn't disclose to the grand jury those things to which you have testified here on your direct examination?

A. At that time I didn't know what to believe or not to believe about my brother.

Q. But you knew what your position was and you had reason to know what your husband's position was in relation to this thing?

A. Yes, but my brother was under arrest.

Q. Nevertheless, you took refuge in your constitutional plea?

A. Yes, I did.

Mr. Saypol: That is all.

Redirect examination.

By Mr. E. H. Bloch:

Q. Were you under indictment at the time when you testified before the grand jury?
A. No.
Q. You are a defendant now, aren't you?
A. Yes.
Q. And have you insisted on going on this stand here and testifying about it?
A. I certainly have.
Q. To protect yourself and to defend yourself against the accusations against you?
A. Absolutely.

Recross examination.

By Mr. Saypol:

Q. You didn't think there was any other reason——
The Court: Gentlemen, when is this going to stop?

Mr. Saypol: Well, I should think this question of taking [fol. 2089] the stand is something that should not be discussed, but having been asked, I desire to ask a question.
The Court: Go ahead.

Q. You have taken the stand on the advice of your lawyer, Mr. Bloch, have you not?
A. Yes.
Q. Did you likewise testify before the grand jury that the answers to these questions might incriminate you on the advice of the same Mr. Bloch?
A. I am afraid—please repeat it? I really don't know.

(Last question read.)

The Witness: Mr. Bloch did not advise me to answer any question any way, one way or another. He simply advised me of my rights, and that it was up to me to so exercise them if I saw fit.
Q. Didn't you testify a few minutes ago that you talked to Mr. Bloch the first time you went to the grand jury on August 7th?

A. That is right.

Q. And didn't you testify also that you talked to Mr. Bloch between August 7th and August 11th on the next occasion of your appearance before the grand jury?

A. Yes, I did.

Q. Didn't you testify that you had counsel?

A. Yes.

Q. Didn't you answer my questions to the effect that you had told Mr. Bloch what had transpired before the grand [fol. 2090] jury and he had advised you?

A. He had advised me of my rights, but you asked me if he had advised me to answer certain questions a certain way and that he did not.

Q. Did you tell him what they were asking you?

A. Yes, I did.

Q. You didn't tell him they were asking you about anything concerning David Greenglass and the atom bomb theft, did you?

A. I can't recall exactly everything I might or might not have told him about.

Q. Were there any other questions you were afraid of or apprehensive of when you talked to Mr. Bloch? Did you tell him about any other crime?

A. No crime that I could have committed because I didn't commit any.

Mr. Saypol: That is all.

Mr. E. H. Bloch: That is all.

(Witness excused.)

Mr. E. H. Bloch: Defendants Julius Rosenberg and Ethel Rosenberg rest.

Mr. Kuntz: I would just like to know whether these various indictments in this case are considered in evidence, or must they be put in evidence.

Mr. Saypol: They are not even before the Court, if the Court please.

The Court: That is right.

Mr. Saypol: They would normally be deemed received [fol. 2091] without being marked.

The Court: It is a question of relevancy. There are thousands of indictments that are on file in the Court, but they have no relevancy in the case.

Mr. Kuntz: The indictments in this case; no other case.

Mr. Saypol: Does Mr. Kuntz perhaps refer to the indictments against Harry Gold or against Brothman and Moskowitz?

Mr. Kuntz: Mr. Saypol knows that I am asking for the three indictments in this case.

Mr. Saypol: And I know Mr. Kuntz shouldn't refer to these——

The Court: Just a moment. Mr. Kuntz, make your offer and then let us have a ruling on it. Just make your offer.

Mr. Kuntz: I wanted to know, if the Court please, whether these indictments, the first indictment in this case, is——

The Court: They are all filed records. Now you are making a request that they be something to be submitted to the jury?

Mr. Kuntz: Yes.

The Court: Or something to which you can refer?

Mr. Kuntz: Yes, that is correct.

[fol. 2092] The Court: That is another point.

Mr. Kuntz: That is the only thing I am asking.

The Court: Mr. Saypol?

Mr. Saypol: I object to it on the ground that it is wholly irrelevant.

The Court: What is the relevance?

Mr. Kuntz: I think the indictment in this case is relevant and should be before the jury, and the jury should know what it says. As a matter of fact, I believe your Honor yourself read, or Mr. Saypol read, from the indictments.

The Court: They are the indictments on trial. They will have them.

Mr. Kuntz: That is what I am talking about, the indictments on trial.

The Court: But you are offering two other indictments, you said.

Mr. Kuntz: In this case.

The Court: There is only one indictment in which the defendants are being tried.

Mr. Kuntz: All right.

The Court: The superseding indictment. That will be before the jury.

Mr. Kuntz: Then, without the notations that the clerk told me about on the back, I offer in evidence before this jury

the first indictment in this case against Julius Rosenberg [fol. 2093] and Ethel Rosenberg, I offer that in evidence—wait a minute, I am sorry And Anatoli Yakovlev, I believe.

Mr. Saypol: If the Court please, all Mr. Kuntz has to do is to refer to a piece of paper in the file there without making this extended speech, and my answer would be that I object on the ground that it is wholly irrelevant, that I am not trying a case other than the one reflected in the indictment.

The Court: As a matter of fact, I told the jury in their selection that they are to draw no inferences whatsoever from any indictment, that it was merely a way of bringing somebody before the Court, and the fact that there may have been other indictments filed or there weren't any indictments filed, had no relevance to the case. That is all.

[fol. 2094] Mr. Kuntz: I believe your Honor cautioned them against that in behalf of the defendants, that they should not draw any inference.

The Court: That is correct.

Mr. Kuntz: Now, here is a defendant asking that it be put in evidence.

Mr. Saypol: I object to this.

Mr. Kuntz: And may I refer to the number?

Mr. Saypol: I object to this discourse, because I am not trying to prove anything except the case.

The Court: Let me see the indictment.

Mr. Kuntz: May I identify it?

The Court: I don't see any particular relevance to it. There has nothing been pointed out to me as to any relevance other than the fact that you want it before the jury, and if that is your only reason, I will sustain Mr. Saypol's objection.

Mr. Kuntz: May we have it marked for identification or deemed marked for identification?

The Court: That is right.

Mr. Kuntz: That is, just the body of it, not the notation.

The Court: Identify it by number.

Mr. Kuntz: C——

The Court: C what?

[fol. 2095] Mr. Kuntz: The body of the indictment is C.133-141.

(Marked Defendants' Exhibit J-1, being indictment C, 133-141 for identification—deemed marked.)

Mr. Kuntz: Now, I offer for identification, likewise, the body of the indictment numbered C. 133-293, and I presume that your Honor will rule the same on that?

(Deemed marked Defendants' Exhibit J-2, for Identification.)

Mr. Kuntz: May we have an exception on both?

The Court: Sure.

Mr. Kuntz: Then I take it that the last superseding indictment is deemed in evidence; is that right?

The Court: It is not deemed in evidence, but it is a matter from which I have quoted and read——

Mr. Saypol: That can go to the jury.

The Court: It is a record that can go to the jury.

Mr. Kuntz: May I show this, the last indictment?

The Court: Not right now, no.

Mr. Kuntz: No, no, at the time I sum up.

The Court: I will send it in to them.

Mr. Kuntz: Fine; that is all I want to know.

The Court: I will send it in to them.

Mr. Kuntz: That is all I want to know. I don't care whether it is marked or not.

The Court: They have got to know what offense is before [fol. 2096] them.

Mr. Kuntz: As long as they are going to have it, that is all I want.

The Court: You can rest assured, they are going to have it and they are going to have a full explanation from me as it affects your client as well as the other defendants.

Mr. Kuntz: Thank you very much, sir.

Mr. Saypol: I think I should make the observation that Mr. Kuntz shouldn't get too excited——

Mr. Kuntz: Mr. Kuntz is not excited.

Mr. Saypol: —because we will ask your Honor to charge as to each defendant in the case, that a single overt act as to any and all, may be mentioned.

The Court: Oh, Mr. Saypol, please. I will instruct the jury on the law. I know what Mr. Kuntz has in mind, and I will see that the jury understands fully what the law on

the subject is. You need have no fear or no concern about that, Mr. Kuntz and Mr. Saypol.

Mr. Kuntz: Mr. Kuntz in all his excitement never makes a wrong statement or improper statement.

The Court: Of course not, neither does Mr. Saypol.

Mr. Kuntz: I wish Mr. Saypol would do as little harm in his calmness as I do in my excitement.

[fol. 2097] The Court: Let us have no more. We are near the end of this case.

Mr. Kuntz: May we have an exception to your Honor's ruling?

The Court: I gave it to you before.

Mr. Kuntz: And with that exception, if your Honor please, the defendant Sobell desires to rest on the record.

The Court: Very well.

All right, we will take a short recess at this point.

(Short recess.)

[fol. 2098] The Court: Is there rebuttal?

Mr. Saypol: I beg pardon?

The Court: Is there any rebuttal by the Government?

Mr. Saypol: Just two or three short witnesses.

The Court: Very well.

The Clerk: Evelyn Cox.

Evelyn Cox, called as a witness by the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Mrs. Cox, will you sit right back and make yourself easy, like you do in a rocking chair.

You and I had some talk about the Rosenbergs, you remember?

A. Yes, Mr. Saypol.

The Court: Speak up, please, madam.

Q. The Judge asked you to speak up because it is very hard to hear, and everybody wants to hear what you have to say, so you talk loud to me while I talk to you, will you?

A. All right.
Q. Good. Where do you live, Mrs. Cox?
A. 147-16 110th Road, Long Island.
Q. Married?
A. Yes.
Q. Do you have a child?
A. One child.
[fol. 2099] Q. In 1944 and in 1945, were you working?
A. Yes.
Q. What kind of work did you do?
A. Domestic.
Q. At that time did you work part time for some people known as Julius and Ethel Rosenberg?
A. I did.
Q. Where did they live?
A. 10 Monroe Street.
Q. That is here in Manhattan——
A. Knickerbocker Village.
Q. When did you work for them?
A. From September, '44 all though '45.
Q. To the end of 1945?
A. Through the end of 1945.
Q. How about the summer time in 1945, did you work then?
A. Well, no they were away for two or three months. I just don't remember how many, but they were away in the summer.
Q. Did you work all week or only a few days a week?
A. No, three days.
Q. Three days a week?
A. Three days a week.
Q. Do you see Mr. and Mrs. Rosenberg in the court here?
A. Yes, I do.
Q. Will you say where you see them?
A. Mr. Rosenberg is sitting there (indicating).

(The defendant Julius Rosenberg stands.)

Q. And Mrs. Rosenberg next to him?

[fol. 2100] (The defendant Ethel Rosenberg stands.)

A. That's her.

Q. You recognize them?

A. Yes.

Q. Do you remember how the apartment was arranged——

A. Yes.

Q. —when you came in from the hall door?

A. Yes.

Q. There was a living room on the left, is that right?

A. Yes, yes.

Q. And the bedroom and the kitchen and the bathroom were on one side of the living room, is that right?

A. Yes.

Q. And there was a window in the living room?

A. Yes.

Q. In which part of the living room was the window?

A. The east.

Q. I think you told me that is where you used to notice from where the sun came in?

A. Yes.

Q. Sometime in that period while you were working there—I will withdraw that.

Now, the window being at the east, at which part of the apartment was the entrance?

A. Was the what, the entrance?

Q. The entrance to the apartment, the door leading to it from the hall. Is that at the other end of the window?

[fol. 2101] A. The end of the window, that was——

Q. I mean at the other end of the living room, excuse me.

A. Yes, it would be at the other end.

Q. That would be the west.

A. The west.

Q. And is it not the fact that the kitchen and the bedroom and the bathroom were on the south side of the apartment?

A. Yes.

Q. Now, about that time while you were working there, at the end of 1944 and in 1945, did there come a time when you noticed a new piece of furniture there?

A. Yes.

Q. Would you be good enough to look at these pictures, Government's Exhibit 28, and tell us whether you see on

these pictures something that looks like the new piece of furniture that you saw there (handing to witness)?

(The witness indicates.)

Mr. Saypol: May the record show that Mrs. Cox identified illustration No. 2.

Mr. E. H. Bloch: That is on Exhibit what?

Mr. Saypol: Government's Exhibit 28.

Q. How would you describe that piece of furniture? What do you call it?

A. Console table.

Q. What kind of table?

A. A console table.

Q. When can you remember did you first notice that [fol. 2102] console table?

A. I really can't remember that.

Q. Well, was it in 1944?

A. I don't think so. I think it was in 1945 but I couldn't tell you the month or anything like that.

Q. Was there any other new furniture in the apartment?

A. No.

Q. When you saw that new table was there a time you had some talk with Mrs. Rosenberg about it?

A. Yes.

Q. Will you tell us—withdraw that.

What kind of work did you do there in the apartment, cleaning?

A. Well, I dusted the furniture and things like that.

Q. Polished the furniture?

A. Yes.

Q. Cleaned rugs, if they had any, or cleaned the walls and things like that?

A. Yes.

Q. When you saw this new table, did you have some talk with Mrs. Rosenberg about it?

A. Yes. I admired the table. I asked her where it had come from——

Mr. E. H. Bloch: Will you pardon me, Mrs. Cox. In this kind of a general question, your Honor, I don't know whether to jump up and make an objection upon the ground

that this is not proper rebuttal. I am at a distinct disadvantage. I would suggest, if Mr. Saypol will tell the Court in my presence what he is trying to elicit from the wit-
[fol. 2103] ness——

The Court: Oh, I think I know. I think it is quite obvious to me and I don't have to have him tell me up at the bench.

Mr. E. H. Bloch: All right. Well, in that case I am constrained to make my objection upon the ground that——

The Court: I will overrule it.

Mr. Saypol: Mr. Bloch doesn't have to be constrained. All he has to do is to say "objection," and get a ruling, and then depending on the ruling, go ahead.

The Court: Well, he is a little worried about you. He knows that you do not like objections.

Mr. Saypol: Well, it isn't a matter of taste on my part.

The Court: He doesn't want to offend you, Mr. Saypol.

Mr. Saypol: It is not a matter of personal offense. It is just a matter of technical indulgence that I don't like.

Mr. E. H. Bloch: I will take Mr. Saypol's objection and straightforwardly object to the question upon the ground that it is not proper redirect.

The Court: Overruled.

[fol. 2104] Mr. E. H. Bloch: I respectfully except.

Q. Now, we have to have our talk go on, Mrs. Cox. You tell us what you said to Mrs. Greenglass—Mrs. Rosenberg. You see, they got me all mixed up.

What you said to Mrs. Rosenberg and what she said to you about that table. You say you admired it?

A. Yes. I said—I asked her where it came from. It was such a pretty table and she said that a friend of her husband gave it to him as a gift. Then she added that he hadn't seen him for a long time and it was a sort of a wedding present. That is all the talk we ever had about the table?

Q. Did she ever say to you that she bought it in Macy's?

A. No.

Q. Did she ever say to you that her husband bought it and paid $21 for it in Macy's?

A. No, she said it was a gift to her husband from a friend.

Q. Did the table—withdraw that?

Did there come a time when you noticed that the table wasn't where you had last seen it in the apartment?

A. Yes.

Q. And what did you notice about that?

A. Well, the table wasn't there. It wasn't where it usually stayed and I asked her why she had removed it, and she said she had put it away in the closet because the place [fol. 2105] was too congested.

Q. Where had it usually stood, next to which wall?

A. On the north.

Q. The north wall?

A. The north wall.

Q. That would be the wall opposite——

A. The kitchen door.

Q. —the entrance to the kitchen?

A. Yes.

Q. Across the way from the kitchen?

A. Yes.

Q. Was it ever standing in any other place while you saw it there?

A. No, it always stood there.

Q. With that back——

A. Against the wall.

Q. —the console part against the wall.

A. Yes.

Q. Now, was the place congested? Was there a lot of furniture there filling the place up?

A. Well, at one time it was congested and then I don't know, I think she got rid of some of the things. I am really not sure but when the table was removed, I couldn't say whether it was congested or not because I don't remember that.

Q. Did you ever see the table in the closet?

A. Yes, I saw it in the closet several times.

Q. Did it fill the closet up pretty much?

A. No, the closet is a very large closet.

Q. And this table was there from that time on, standing [fol. 2106] in the closet?

A. Yes, sir.

Q. That is the closet which is right next to the bathroom?

A. To the bathroom.

Q. So that if one opened the door to the closet, the electric light from the bathroom would shine into the closet?
A. Yes, sir.
Q. Did you ever see the table outside again in the living room——
A. No.
Q. —up to the time when you left working there in December of 1945?
A. No, I never saw it.
Q. Was there any other piece of furniture in that apartment as new or as good looking or as nice as that table?
A. No.

Mr. E. H. Bloch: Well, I object to that.

Q. Would you say——

Mr. E. H. Bloch: I object to the form of that question, "good looking."
The Court: I will overrule the objection.

Q. Was that the best piece of furniture in the apartment?
A. It was.

Mr. Saypol: That is all.
The Court: Was there any other furniture in the closets?
The Witness: No.

[fol. 2107] Cross-examination.

By Mr. E. H. Bloch:

Q. Mrs. Cox, was there a breakfront in the living room?
A. A breakfront?
Q. Maybe I will try to explain it to you. Was there a——
A. Oh, yes, she used for books, yes.
Q. And how many tables in all were there in the living room?
A. She had a leaf table, a drop-leaf table, and the console, those were the only two.
Q. Were there ever three tables in the living room?
A. No, I don't think so.
Q. Please try to remember, Mrs. Cox.
A. I don't think there were three. There was a drop-leaf table and the console.

Q. Was there a gateleg table?
A. Yes, sir, a gateleg table.
Q. So there were three, were there not?
A. No. That's what I call the drop-leaf.
Q. Oh, I see.
A. The gateleg is what I call the drop-leaf because it had leaves.
Q. And then there was another table that you just described?
A. You mean the console table?
Q. Yes.
A. Yes, sir.
Q. Now what color was the console table?
A. Mahogany color.
Q. What?
A. The color of mahogany.
[fol. 2108] Q. Did you ever hear the name Steingart used in the Rosenberg house?
A. Steingart?
Q. Yes.
A. Never.
Q. Did the Rosenbergs ever tell you that some of their furniture was obtained from a couple who went out to the West, to California?
A. Yes, I know they had some things for some friends of theirs who had gone to California, yes.
Q. And did they ever tell you that some of the furniture in the living room was really the furniture of their friends out in the West?
A. Yes, they had some things, these people in California, and they sent the things.

The Court: When you noticed this table, this was the only piece of furniture that had come in at that particular time?
The Witness: Yes.
The Court: There wasn't——
The Witness: No, nothing else.
The Court: —any other pieces?
The Witness: No, nothing else; just one table.

Q. When did the breakfront come in, Mrs. Cox, if you remember?

A. It was there when I got there.

Q. It was there by 1944?

A. Yes, it was there when I went to work.

[fol. 2109] Q. Did there come a time while you were working for the Rosenberg's when one of the tables was disposed of or sold by Mrs. Rosenberg?

A. You mean the console? That is the only table, and it wasn't disposed of because it was in the closet. Mrs. Rosenberg put it in the closet.

Q. When you left in 1945 was that console table that you just described still in the closet?

A. Yes, it was in the closet. It came in 1945, she got it in 1945.

Q. Now let me understand you, Mrs. Cox. You say that this console table you described came in 1945 to the Rosenberg apartment——

A. Yes, sir.

Q. —is that right?

A. Yes.

Q. Now, how long did the Rosenbergs use this console table before it was put into the closet?

A. Well, that I couldn't say. I don't know; it was outside maybe a month or two months, I couldn't say, I don't know.

Q. Now while it was outside did you notice whether it was used for eating purposes?

A. It was never used for any purposes, so far as I know, never.

Q. You mean it was just a decorative——

A. It was an ornament.

Q. It was just a decorative piece?

A. Yes.

[fol. 2110] Q. Could that console table have been opened up so that it could be used for eating purposes?

A. Well, it had a leaf. It had a leaf, you know, that used to stay against the wall that it could have been used but I don't know that they ever used it. I never saw them using it.

Q. I want you to describe with your hands, if you will, how long this console table was?

The Court: You mean when the leaf was down?

Q. Either when the leaf was down or when the leaf was up. Try to give us the best kind of a description you can.

A. It was about this length (indicating).

Mr. Saypol: The witness indicates about——

The Court: Three feet.

Mr. Saypol: —about three feet.

Mr. E. H. Bloch: About three feet, yes.

The Court: Was that when the leaf was down?

Mr. Saypol: No, I think the witness is indicating the width.

The Witness: Not the width; the length.

The Court: The length.

The Witness: Yes, this way (indicating).

Mr. Saypol: Maybe this picture will help you——

Mr. E. H. Bloch: I will show it to her (handing witness).

[fol. 2111] By Mr. E. H. Bloch:

Q. Now you say, Mrs. Cox, that this console table looked like——

A. Yes.

Q. —this kind of a table in illustration No. 2—do you notice the number 2, Mrs. Cox?

A. Yes.

Q. In this picture would you say that this table in the back here (indicating), the white part is with the leaf down?

A. No, the leaf is not down in that one. The leaf is up. Look at the two leaves there (indicating).

Q. Well, we are using "down" and "up" differently. The leaf is up, in other words, so that the table appears flat; is that what you mean by "up"?

A. Yes.

Q. Now how long would you say the table was when the leaf was up from one end to another end?

A. About this (indicating).

Mr. Saypol: Indicating three feet.

Would you mind, Mr. Bloch, if I interrupt?

Mr. E. H. Bloch: Surely, you may.

Mr. Saypol: Mr. Bloch is either talking or something else or——

The Witness: Different.

Mr. E. H. Bloch: Well, I do not want to confuse the witness.

The Court: The stenographer cannot take everybody [fol. 2112] talking at one time.

You say, Mrs. Cox, he is talking about another thing?

The Witness: Yes, because he don't seem to understand.

The Court: You say he doesn't seem to understand.

The Witness: What I am saying is that the table, it had a leaf down, that it could be turned down and set down and then it could be turned up to stay against the wall.

Mr. Saypol: May I ask one or two questions here, to get this cleared up?

Mr. E. H. Bloch: You may. I want a full elucidation of this console table.

By Mr. Saypol:

Q. Mrs. Cox, I think Mr. Bloch misunderstands. You had told us that this table, No. 2, is the one that looks like the console?

A. Yes.

Q. Now this is the table as you see it in the darker color?

A. Yes.

Q. Now did you notice that in back of the console there is a light sketch of the same table but the leaf is down, is that right?

A. Yes.

Q. Do you notice that?

A. Yes.

Q. Now, I think when Mr. Bloch asked you about the [fol. 2113] length of the table he was referring to the light sketch with the leaf down from front to back, is that right?

A. Oh, yes.

Q. Now you do it my way. You see the table in front of you, the darker sketch with the leaf up as it would stand against the wall, as you saw it?

A. Yes.

Q. How wide would you say it was from left to right if you were standing in front of it?

A. With the leaf up?

Q. With the leaf up?

A. Just as it is, only about this (indicating).

The Court: About a foot.

Q. Now wait. I am saying from front to back, not from one leg to the other.
A. No, I know.
Q. Here is the front (indicating).
A. You are saying across, isn't it (indicating)?
Q. No, I am saying from this leg, facing the front of the table as it stood up against the wall, from the left side of the table to the right side?
A. Oh, well, that is is about this (indicating).
Q. Three feet?
A. Yes.
Q. Right. Now, as it stood against the wall, from front to rear, what was the width?
A. Just about this (indicating).

[fol. 2114] Mr. Saypol: That would be about 18 inches.
The Court: About that.

A. Yes, about that.

Mr. E. H. Bloch: Almost two feet—it is hard to say from here.
The Court: About 18 inches.
Mr. E. H. Bloch: About that; all right.
The Court: Go ahead.
Mr. Saypol: Is that what you want, Mr. Bloch? Now, do you want to know with the leaf down how far it would extend?

Mr. E. H. Bloch: Yes.

By Mr. Saypol:

Q. How high would you say from the top of the table it was to the top of the leaf as the leaf stood up against the wall?
A. That is hard to say, I really don't know.
Q. About the same width from front to back?
A. Yes, about.
Q. About two feet, again?
A. Yes.

Q. So that when the leaf was down, as you see it in this light sketch here (indicating), the table would be about four feet long from here to here, is that right (indicating)?

A. Yes.

Mr. Saypol: Does that help you?

[fol. 2115] Mr. E. H. Bloch: It does; thank you very much, Mr. Saypol.

By Mr. Bloch:

Q. I would just like to ask you one question: When you had a conversation with Mrs. Rosenberg about where the table came from—do you remember you testified about that? Did she or did she not say that this was a gift from her husband?

A. She said it was a gift to her husband from a friend who hadn't seen him for years.

Q. And did she tell you the name of the friend?

A. No, she did not.

Q. Now is it your testimony, Mrs. Cox, that while you were working there during the years 1944 and 1945, that this console table that you have described was the only console table that was delivered or was new furniture in the Rosenberg home?

A. Yes.

Q. Now was the console table that you are trying to describe one which was plainly then this console table in the sense that it had a more modern design?

A. I really don't know.

Q. Maybe I can explain myself. You will notice——

A. Yes, I know what you mean.

Q. In other words, here——

The Court: Wait, let her answer.

[fol. 2116] Mr. E. H. Bloch: I am sorry.

The Court: Are you ready to answer, Mrs. Cox?

The Witness: I am trying to remember. I think it looked exactly like this (indicating).

Q. Exactly like that. Would you say that the——

Mr. E. H. Bloch: I wonder whether the jury would try to follow.

Q. —would you say that the console table, when it was up, had a top which was not straight across but had curves in it?

A. I am trying to remember that but I don't think I could say definitely because I don't think I can remember that. I don't think I can. I really can't remember that; I really couldn't tell.

Mr. E. H. Bloch: Just pardon me one second, (conferring with A. Bloch off the record).

Q. Mrs. Cox, may I ask you whether or not there are other families for whom you worked during the years 1944 and 1945 outside of the Rosenbergs?

A. Other families?

Q. Yes.

A. No, I didn't work for anyone but for her.

Q. And have you worked for anybody since 1945 doing domestic work?

A. I just worked for a lady who lived next to her, in the next apartment in Knickerbocker Village.

[fol. 2116a] Q. And how long have you been living—working for that lady?

A. Oh, I don't know, about a year, about a year.

[fol. 2117] Q. Now, this is 1951.

A. Yes.

Q. Would you say that you have been working for that lady in Knickerbocker Village since 1950?

A. Oh, no, no.

Q. Well, I thought you said about a year.

The Court: That doesn't mean a year from today.

A. No, about a year.

Q. Oh, you worked about a year altogether?

A. About a year. I worked for this Mrs. Laffeur, who was Mrs. Rosenberg's neighbor, and that was in '47, '46—no, I think that was '47; I worked for her in '47.

Q. Now, have you worked for anybody——

A. No.

Q. —since 1947?

A. No, I haven't.

Q. You haven't done any work at all?

A. No.
Q. Of a domestic kind?
A. No.
Q. May I ask you, Mrs. Cox, in the two years in which you worked for Mrs. Rosenberg, did you find Mrs. Rosenberg to be an honest woman?
A. Very.

Mr. Saypol: I object.
The Court: Are you making a character witness out of her?
Mr. E. H. Bloch: Yes.
The Court: Then you have got to ask her about her reputation in the community.
[fol. 2118] Mr. E. H. Bloch: I will.
The Court: And she won't know her reputation in the community because she doesn't live in the community.
Mr. E. H. Bloch: I don't know. She may have discussed Mrs. Rosenberg's reputation with other people in the development. I will ask her. If she didn't, she won't know.

Q. Mrs. Cox, did you discuss Mrs. Rosenberg with any of the people around Knickerbocker Village?
A. I didn't know anyone around.

Mr. E. H. Bloch: All right, that is all.
The Court: Step down, Mrs. Cox.
Mr. Saypol: Thank you, Mrs. Cox.

(Witness excused.)

The Clerk: Helen Pagano.

Helen Pagano, called as a witness on behalf of the Government, in rebuttal, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. Mrs. Pagano, will you keep your voice up, please, so that all the jurors and counsel can hear you, please. What is your occupation?

A. I am a secretary. I work for John Rogge.

Q. Is that Mr. O. John Rogge?

A. Yes.

Q. For how long have you been so employed?

[fol. 2119] A. About three and a half years.

Q. Now, do you recall a day last June when you saw a man by the name of Louis Abel?

A. Yes, sir.

Q. When did you see him for the first time?

A. He came to the office early in the morning on June 16th to see Mr. Rogge.

Q. It was June 16, 1950?

A. Yes, sir.

Q. Did he see Mr. Rogge on that morning?

A. Yes, he did.

Q. And thereafter did he leave the office?

A. Mr. Abel?

Q. I am talking about Mr. Abel.

A. Yes. He stayed till about noon or so, then he left and came back.

Q. What time did he return?

A. He returned about one.

Q. Did he bring anything with him when he returned?

A. Yes, he brought a package of bills, wrapped in a brown wrapper.

Q. I show you Government's Exhibit 10 in evidence and ask you——

Mr. E. H. Bloch: If the Court please, I object to this. Is there any controversy about the fact that Mr. Abel came to Mr. Rogge and delivered this? I don't think there has been any disputed question.

The Court: Well, I don't think the Government knows [fol. 2120] whether it is disputed or not. Do you concede that that was done?

Mr. E. H. Bloch: Of course. I am not going to be technical about it. Of course. I never disputed the fact that Mr. Abel came to Mr. Rogge and gave him $4,000. in this brown bag.

The Court: He doesn't dispute it.

Mr. E. H. Bloch: I thought that was conceded.

The Court: Very well.

Mr. Saypol: In other words, Mr. Bloch now concedes Mr. Abel's testimony?

Mr. E. H. Bloch: I don't concede anything of the kind.

The Court: No, he is conceding that Mr. Abel came there with $4,000. in a brown bag.

Can she identify the bag?

Mr. Kilsheimer: I think she can.

Mr. Saypol: If something had been said before, I think this would have been unnecessary.

Q. I show you this Government's Exhibit 10 in evidence and ask you if you recognize this (showing).

The Court: The paper container.

A. Yes, this is the wrapper.

Q. Is that the wrapper which was around the money which Mr. Abel brought to Mr. Rogge's office?

[fol. 2121] A. Yes, sir.

The Court: All right.

Mr. E. H. Bloch: Just a second—I am sorry, just a few questions.

Mr. Kilsheimer: I am not finished.

By Mr. Kilsheimer:

Q. Do you know how much money was in the wrapper when it was brought to the office?

A. There was $3,900.

Q. $3,900?

A. Yes.

Mr. Kilsheimer: Your witness.

Cross-examination.

By Mr. E. H. Bloch:

Q. Do you know Mrs. Ruth Greenglass?

A. I have seen her at the office, yes.

Q. Did you see her at the office?

A. Yes.

Q. Did you see her at the office frequently at or about the time of her husband's arrest?

A. Well, thereafter, and she came frequently, yes.

Q. How frequently?

A. It is hard to say.

Q. Every day?

A. No, no.

Q. Every other day?

A. I would say on an average of about once a week or once every two weeks.

Q. Right at the beginning, after her husband was arrested?

A. Well, I don't think right at the beginning; maybe several weeks afterward.

[fol. 2122] Q. Well, did she come around more often to your office right after her husband's arrest?

Mr. Saypol: Mrs. Pagano, will you wait, please. Will you wait just a second.

I thought the only purpose for which this witness was called has been conceded.

The Court: That is correct.

Mr. Saypol: At this point Mr. Bloch is going into a new field. I think he should be cautioned.

The Court: A completely new field.

Mr. E. H. Bloch: I have a right to make her my witness.

The Court: This is part of the Government's case; this is Government's rebuttal.

Mr. E. H. Bloch: That is true.

The Court: This is Government's rebuttal. You can cross-examine the witness on anything that has been brought out. If you want to make her your own witness, she should have been part of your case, which you didn't do. I won't be too technical with you, provided you will be very brief with her.

Mr. E. H. Bloch: That is all I want to find out from her.

The Court: Go ahead.

[fol. 2123] By Mr. E. H. Bloch:

Q. Did Mrs. Ruth Greenglass come around to your office more often right after her husband's arrest than she did later on?

Mr. Saypol: I don't know what that means, if the Court please, "more often," "less often"; I don't know how it is relevant.

The Court: See if the witness knows.

Can you answer the question?

A. I don't think she did. I wouldn't put it that way.

Q. How would you put it? Just put it anyway you want.

A. Well, she would come in from time to time, as she has since we took the case, and I don't think it was more often at the beginning. I just don't recall how often she came.

Q. And could you give us your best estimate as to how many times a week she did come around, a couple of times a week she came around to your office?

A. Well, I think it was hardly more than once a week, but sometimes she would come in and then she would not be back for several weeks. She would come from time to time.

Mr. E. H. Bloch: All right, thank you very much.

[fol. 2124] The Court: All right.

(Witness excused.)

The Clerk: Ben Schneider.

Ben Schneider, called as a witness on behalf of the Government in rebuttal, having been first duly sworn, testified as follows:

Mr. E. H. Bloch: Now, if the Court please, I think I understood the witness when he said "Ben Schneider." I have been informed by my associate, Mr. Kuntz, that this witness' name does not appear on the list of the witnesses submitted by the Government, and I am going——

The Court: This is rebuttal.

Mr. E. H. Bloch: I am going to object.

The Court: The cases hold that in rebuttal the witness not on the witness list, who is not known at that time to the Government, can be called.

Mr. E. H. Bloch: Then, if the Court please, I want to record my objection and may I, for the purpose of pressing my objection, ask this witness a few voir dire questions?

The Court: No, you can't.

Mr. E. H. Bloch: As to when the Government knew about the testimony that he is about to give here.

The Court: Mr. Saypol, what is it you want to say?

[fol. 2125] Mr. E. H. Bloch: I will take Mr. Saypol's statement to that.

Mr. Saypol: I want to cite to Mr. Bloch Goldsby v. U. S., which your Honor undoubtedly knows of, in 160 U. S. 70, 76, and Gordon v. U. S., in 289 Fed. Reporter, and I think his objection is highly improper, but if he wants to ask any questions it is perfectly all right with me.

The Court: Do you want to discuss it with him privately and give him anything, so that he doesn't have to take up the time with any preliminary questions?

Mr. E. H. Bloch: I am willing to take Mr. Saypol's statement as to when the Government knew about this witness.

Mr. Saypol: One question, and I will clear it up.

The Court: All right.

Direct examination.

By Mr. Saypol:

Q. When is the first time in your life that you saw me as a lawyer?

Mr. E. H. Bloch: No.

Q. In any other way?

A. Yesterday.

Mr. E. H. Bloch: That is not it, your Honor. I mean, the first time the Government, not Mr. Saypol.

[fol. 2126] The Court: Just sit down, please, Mr. Bloch. I know the point you are urging and we will cover it.

Mr. E. H. Bloch: All right.

Q. When was the first time, Mr. Schneider, that you had any knowledge, any notice, any conversation with any human being regarding the fact of your being a witness here?

A. Yesterday.

Q. What time?

A. About 11.30.

Q. At that time were you visited by some agents from the Federal Bureau of Investigation?

A. Yes, sir.

Q. And was it the very first time?

A. Yes, sir.

Q. What is your business?

A. A photographer, sir.

Q. Where is your place of business?

A. 99 Park Row.

Q. When you say that you are a photographer, what is the substantial part of your business, what do you do mainly?

A. Passport photographs and identification photographs.

Mr. Saypol: May this be marked for identification, please.

(Marked Government's Exhibit 32 for identification.)

Mr. Saypol: I take it that Mr. Bloch's objection as to the failure to list the name has now been disposed of to his satisfaction.

Mr. E. H. Bloch: No, it is not to my satisfaction.

The Court: He made an objection; the objection is overruled.

[fol. 2127] It is to my satisfaction.

Q. Mr. Schneider, I show you Government's Exhibit 32 for identification (showing). Do you recognize that?

A. Yes, sir.

Q. What do you recognize it as?

A. My place of business.

Q. Is that a photograph that was taken by the agents of the FBI since yesterday when they saw you for the first time?

A. Yes, sir.

Mr. Saypol: I offer it in evidence.

Mr. E. H. Bloch: I would have no objection to it provided you ask him one further question, Mr. Saypol, whether or not this picture of his place of business is the same substantially the same as it was last year, in May or June.

The Court: Yes.

Q. Is your place of business the same as it was last May or June?

A. Yes; yes, sir.

Q. Now, since Mr. Bloch knows what I am going to ask you about, we will ask about May or June.

Mr. Saypol: Will you mark that, please.

(Marked Government's Exhibit 32 in evidence.)

Q. Last May or June or some time in the spring or summer, were you vis-ted by a family consisting of a husband [fol. 2128] and wife and two children, at your place of business?

Mr. E. H. Bloch: Now, if the Court please, at this time I want to register an objection upon the ground that any testimony that is sought to be elicited from this witness with respect to the defendants Rosenberg is improper, upon the ground——

The Court: Why?

Mr. E. H. Bloch: Upon the ground that it is not proper rebuttal.

The Court: Overruled.

Mr. E. H. Bloch: Upon the specific ground that Mr. Saypol, on cross-examination of the defendant Rosenberg, asked him certain questions, with respect to taking photographs, and he also asked Ethel Rosenberg certain questions, and he is bound by their answers. It was collateral matter.

The Court: Collateral matter?

Mr. E. H. Bloch: It was, sir.

The Court: Well, I don't want to get into a discussion with you. It is overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: Mr. Reporter, will read Mr. Schneider the question, please.

(Question read.)

A. Yes, sir.

[fol. 2129] Q. About how old were the children, do you remember?

A. At that time they appeared to me about six and four.

Q. Do you remember on what day of the week it was?

A. On a Saturday.

Q. Is that a day that you usually worked?

A. No.

Q. Is that how it is that you remember this visit?

A. Yes, sir.

Q. Do you see the two adults here who visited you at that time?

A. Yes.

Q. Will you point them out, please. Where is the man and where is the woman?

A. (Pointing) That is the man.

Q. You mean the man standing up?

A. Yes.

Q. Is that the woman (indicating defendant Ethel Rosenberg) standing?

A. That is the woman.

Q. Did they have some talk with you?

A. The man did.

Q. Did they order some pictures taken?

A. Yes, they had some pictures taken.

Q. What do you charge for pictures, passport pictures?

A. Well, I charge three for a dollar, sir.

Q. Did you do some work for them as a result of their coming there that morning?

A. Yes.

Q. What kind of work did you do?

A. They ordered three dozen photographs, passport size.

[fol. 2130] Q. Do you get an order like that every day?

A. No, I do not.

Q. How much was the price?

A. About nine dollars.

Q. Did they pay you?

A. Yes, they did.

Q. Did you take pictures of the children, too?

A. Yes.

Q. Passport pictures?

A. Yes, passport size.

Q. Did you have any conversation with the man or the woman, that you have just identified, regarding the use to which they wanted to put the photographs?

A. Yes. As he was leaving he was telling me they were going to France; there was some property left; they were

going to take care of it; the wife—that is, his wife was left some property.

Q. While they were there having the pictures taken, did you notice anything about the way the children were behaving?

A. Yes, they were very unruly, sort of.

Q. What did you do as a result of that? Did they interfere with your work?

A. Yes, I was afraid they would spoil or mess something up and told them to go out and come back in about 20 minutes to a half an hour.

Q. At that time was the work finished?

A. Yes, it was practically finished.

Q. Did you then deliver it to Mr. Rosenberg?

A. Yes, sir.

[fol. 2131] Q. Did he pay you?

A. That's right, sir.

Q. And is that the last time you saw him before today?

A. That's right.

Q. Now, when the agents came to visit you yesterday, did they show you photographs?

A. They did.

Q. Was it from those photographs that you picked him out?

A. That's right.

Q. And is it seeing him here now with his wife that recalls it to your memory that they were the persons who came in?

A. That's right; that's right.

Q. Is it also the fact that you weren't usually open on Saturday?

A. That's right.

Q. Is it also the fact that the order was unusual in size and that it was $9?

A. Yes, that's right.

Mr. Saypol: You may examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. Where are the negatives?

A. We don't keep the negatives.

Q. You don't keep any negatives in your place?
A. No.
Q. Not one?
A. We don't, no.
Q. Not for a day?
A. For a day, but after that——
Q. For two days?

The Court: Just a moment. Don't you want him to answer?

[fol. 2132] Mr. E. H. Bloch: Yes, I thought he did.
The Court: All right, just take it easy, please.

Q. For two days?
A. No, we don't.
Q. Never?
A. No.
Q. Now, there was a photograph shown to you of the inside of your place; I want you to describe to the jury the outside of your place?
A. Well, the outside, I have a display in the window, marked "Photographs, signs and photostats."
Q. Do you have in your window pictures of weddings?
A. That's right.
Q. Do you have pictures of brides and grooms?
A. Yes, that's right.
Q. Do you have pictures of buildings?
A. That is more of a flash, see, to advertise the place.
Q. That is your advertising?
A. Yes, that's right.
Q. Do you have two signs in front of your store, in red, with white lettering, called "Photos"?
A. That's right.
Q. Do you have any large sign on the outside, saying, "Passport photos"?
A. Well, no, I haven't got that.
Q. And in your window, don't you have a sign where you say, "Family photos, passport photos"?
[fol. 2133] A. That's right.
Q. And other kinds of pictures that you take?
A. That's right; identification photographs. I have a sign marked "Passport identification engineers."

Q. Do you keep books?
A. Books?
Q. Do you keep books in your business?
A. No.
Q. Have you any record here to show that you sold to the Rosenbergs?
A. No.
Q. Or that you took their photographs?
A. No, we generally take photographs like this, see, engineers, three for a dollar. We don't keep no records of it.
Q. Haven't you any sales slips in your place of business?
A. No.
Q. None at all?
A. No.
Q. Do you read English?
A. I do, sir.
Q. Do you read the newspapers?
A. I do.
Q. Did you ever read about this case before yesterday?
A. I read it casually, yes.
Q. What papers do you read?
A. I read all the papers, sir.
Q. Do you read the Daily News?
A. I do, sir.
Q. Do you read the Daily Mirror?
A. Yes, sir.
Q. Do you read the Journal?
A. I do.
Q. How regularly do you read them?
A. Well, I read the News in the morning, sir.
[fol. 2134] Q. And you have been doing that——
A. And the Telegram in the evening.
Q. And you have been doing that for months?
A. Yes.
Q. Did you ever see the picture of either Mr. or Mrs. Rosenberg in the News or in the Mirror or in the Journal or any paper?
A. That's right.
Q. You did?
A. Yes.
Q. When?
A. Oh, I can't recall.

Q. How many months ago?
A. I think it was a couple of weeks ago.
Q. A couple of weeks ago?
A. Yes.
Q. First time?
A. Yes.
Q. Did you recognize the pictures that you saw in the newspapers as the pictures of Mr. Rosenberg or Mrs. Rosenberg?
A. No, no.
Q. Not at all?
A. No, I did not.
Q. Didn't mean a thing to you?
A. I didn't think of them; I didn't think of them at that time.
Q. And the first time you thought of them was when?
A. When the FBI men came in and showed me a photograph, a front and side view, and then I saw it, I recognized.
Q. You recognized them?
A. Yes.
Q. What kind of a view did you see of Mr. Rosenberg in [fol. 2135] the newspapers? Was it a front view or a side view?
A. Just a front view.
Q. And did you see a side view of Mr. Rosenberg at any time?
A. No, I don't recall.
Q. Did you ever see a front view of Mrs. Rosenberg in the newspapers?
A. No, I don't.
Q. Did you ever see her picture in the newspapers?
A. No, I don't recall.
Q. You say you read the News regularly?
A. Yes.
Q. And you read the Mirror regularly?
A. Last night they had a photograph of Mrs. Rosenberg.
Q. Let's not talk about last night. I am talking about the last couple of months, since May 1950?

Mr. Saypol: I think Mr. Bloch couldn't catch his answer, because Mr. Bloch rushes over the witness and the witness doesn't get a chance to finish his answer.

The Court: I don't know why he is so exercised. He is usually so calm.

Mr. E. H. Bloch: I think it is because we are past our time.

Q. Is it your testimony that you have never seen a picture of Mrs. Rosenberg since May or June 1950 in the newspapers, until yesterday?

A. That's right.

Q. Never saw her picture?

A. No.

Q. Where do you live?

[fol. 2136] A. 79 Montgomery Street, New York City.

Q. Where is that, what section?

A. That is on the East Side, Lower East Side.

Q. Now, do you usually come to your place on Saturdays?

A. Yes, I do.

Q. So that in response to Mr. Saypol's question, when he asked you about coming down on Saturdays, you didn't mean to say, did you, that you remembered this incident because you came down this particular Saturday?

A. May I answer that?

The Court: Certainly, you may.

A. Yes, I come down Saturday. I generally make up my chemicals and fix the papers for the entire week, clean up the place, you see.

Q. And that is——

The Court: But you don't do any work; is that it?

The Witness: No, no, unless somebody comes in. It is a very slow day, see, Saturday.

Q. But you are usually down there on Saturday through the year, are you not?

A. No, no.

Q. You are not?

A. Not all the time, no. During July——

Q. How many Saturdays——

Mr. Saypol: Give him a chance to answer.

[fol. 2137] The Court: Go ahead.

A. (Continuing:) During July and August I generally take off the Saturdays, see?

Q. And how about the other months?

A. I come in just to clean up—no, the other months, I don't. I come in Saturdays just, as I said before, to clean up and cut paper, make chemicals for the week.

Q. At what time did you come in on Saturday?

A. About 10 o'clock.

Q. And how late do you stay?

A. About 2, 1:30, 2 o'clock.

Q. Now, do you know how far your store is from Chambers Street?

A. From Chambers Street?

Q. Yes.

A. Well, there is a New Chambers Street around the corner.

Q. You are right opposite the Municipal Building here, are you not?

A. That's right.

Q. Then there is a New Chambers Street, which is an extension of Chambers Street; isn't that right.

A. That's right.

Q. Did you ever hear of the development, Knickerbocker Village?

A. Yes.

Q. How far is Knickerbocker Village from your store?

A. Well, I should judge—What, in walking distance or——

[fol. 2138] Q. Let's take walking distance?

A. About ten minutes' walk.

Q. And did you ever have any customers from Knickerbocker Village come around to your place?

A. I wouldn't know.

Q. You wouldn't know that?

A. No.

Q. Did you have any other customers on this Saturday that you say the Rosenbergs came into your place to take pictures?

A. I must have had one or two people.

Q. Who were they, men or women?

A. Men.

Q. Could you tell me what kind of pictures the men took that Saturday?

A. Well, they generally take engineers' photographs, see, pertaining to the Municipal Building.

Q. On a Saturday?

A. Yes, they come down there.

Q. You know that the Municipal Building——

A. Is open.

Q. —is open?

A. Yes, sure.

Q. The offices are open on Saturday?

A. Yes.

Q. Is that why you come down on Saturday, to do business?

Mr. Saypol: That hasn't been his answer, if the Court please.

A. No, I couldn't——

[fol. 2139] Mr. E. H. Bloch: I am asking him.

A. No, I came down to clean up and cut paper and make my developer for the week.

Q. But people do come in on Saturdays and order photographs, do they not?

A. Very—I mean, very rarely. It is not like a regular day's business.

Q. Now, what month was this that you say the Rosenbergs came down on a Saturday?

A. It must have been about the middle of June, because——

Q. Middle of June, what year?

A. 1950, not so very long ago.

Q. Can you give us the day?

A. It was on a Saturday. That is as much as I know.

Q. What time?

A. About 11:30.

Q. Did customers come into your place after the Rosenbergs went out?

A. I wouldn't know; I don't think so.

Q. Now, how many customers do you say came into your store that Saturday, in the middle of June, 1950, to take photographs, altogether, including the Rosenbergs?

Mr. Saypol: Didn't he say one or two, maybe engineers?

The Court: I believe he did.

Mr. E. H. Bloch: I would like to test him again, if I [fol. 2140] may.

A. That particular day or——

The Court: That particular day.

Q. That particular day?
A. About one or two.
Q. Excusive of the Rosenbergs?
A. That's right.
Q. How many came in the previous Saturday?
A. Maybe about two.
Q. And how many came in the subsequent Saturday?
A. About three, that is all. That is how it varies.

By the Court:

Q. Is it fair to say that you never got more than three on any Saturday?

A. Well, your Honor, there is certain times of the year when I really come in Saturday for business. That is around December, that is when the business—we get more on that particular Saturday than these sort of summer months.

By Mr. E. H. Bloch:

Q. Now there are some Saturdays when you do a rather rushing business?
A. Not a rushing business.
Q. Well, a good business?

Mr. Saypol: Did you say "a Russian business" or "rushing business"?

Mr. E. H. Bloch: I didn't know that Mr. Saypol was a punster.

[fol. 2141] The Court: You mean you haven't found it out after all these weeks?

Mr. E. H. Bloch: I have been giving him the benefit of the doubt.

Mr. Kuntz: It seems to me, Judge Kaufman, in a case like this, that humor is out of place.

Mr. Saypol: It is not intended as humor. I just want to be clear what his language was.

The Court: Let's get on. Try to restrain your desire to be another Milton Berle.

Q. Now, did the Rosenbergs take a family portrait?
A. No, they did not.
Q. Did you take the children's picture?
A. I did, sir.
Q. Did you take any of the Rosenbergs together?
A. The children and the woman, Mrs. Rosenberg.
Q. You took them together?
A. That's right.

Mr. E. H. Bloch: Just pardon me one second.

The Court: Mr. Kuntz, if you want to make any suggestions, I might suggest that you do it quietly. I heard it all the way up here.

Mr. Kuntz: I am sorry. I didn't mean to do that.

Mr. E. H. Bloch: Luckily no damage is going to be done, because I am going to ask the very question.

[fol. 2141a] The Court: All right.

Q. Did you see the Rosenbergs from the time you say they took pictures in your place, in June 1950, until the time you walked into this courtroom?

The Court: He answered that question.

Mr. E. H. Bloch: I am sorry.

[fol. 2142] Mr. Saypol: I object to it.

The Court: You object because it has just been answered?

Mr. Saypol: Yes.

The Court: I understood he answered. He said, "No."

Mr. E. H. Bloch: He said "No"?

The Court: That is right.

Mr. E. H. Bloch: I didn't so understand, your Honor.

Q. Now, when Mrs. Rosenberg took these pictures with her children as a group, did you take them standing up?

A. The oldest one, I took standing up, alongside of her, and the youngest one she had it on her lap, sitting in her lap.

Q. Now, did you take any pictures of any of the Rosenbergs sitting on a chair?

A. Mr. Rosenberg and Mrs. Rosenberg.

Q. Together or separately?

A. No, separate.

Q. Did you take the pictures of the children sitting on a chair?

A. No, she was. The child, the youngest child, was sitting on her lap.

Q. I am not talking about that picture where Mrs. Rosenberg and the two children took it as a group, I am talking about the pictures of the children separately; did you take [fol. 2143] any of the pictures separately, sitting?

A. No, no.

Q. All standing up?

The Court: No, he didn't say "all standing up."

A. No, one was standing up alongside the mother.

Mr. E. H. Bloch: Maybe I don't make myself clear.

The Court: The mother was sitting; the young child was on her lap; the other one was standing alongside of her.

Q. Forget about that picture. Let's go to another picture that you took.

A. Yes.

Q. Did you take any pictures of any of the children alone?

A. No, sir.

Q. Or sitting on a chair?

A. No, sir.

Q. Did you take the picture of any of the Rosenbergs alone, sitting on a chair?

A. Mr. Rosenberg, sitting alone; then Mrs. Rosenberg, sitting alone by herself, without the children.

The Court: And then another picture, Mrs. Rosenberg——

The Witness: Mrs. Rosenberg with the two children.

The Court: Did you take any picture of Mr. and Mrs. Rosenberg together?

[fol. 2144] The Witness: No, no, your Honor.

Q. Were all the pictures that you took the same size?

A. Yes.

Mr. E. H. Bloch: No further questions.

Redirect examination.

By Mr. Saypol:

Q. Mr. Schneider, do you know how many sets of pictures are required for passport purposes?
A. They generally come in an- take three, three.

Mr. E. H. Bloch: That is objected to as to what other people might do, your Honor, as not binding upon these defendants.
The Court: He is asking him whether he knows.

A. We generally take three.

The Court: All right, I will sustain the objection. I will strike out the answer.
Mr. Saypol: Very well, I will withdraw it. There will be no necessity for it.

Q. How many $9. orders do you usually have in the course of a day?

The Court: I think he has answered that.
Mr. Saypol: Very well. Thank you.
Mr. E. H. Bloch: I would like just to ask one question.

Recross-examination.

By Mr. E. H. Bloch:

Q. Do you say you do many photos for people who re- [fol. 2145] quire them for passports?
A. You get a few during the day.

The Court: No, he means during the course of your business, regularly; do you do a passport business?
The Witness: Yes, we do passport business.

Q. A few during the day?
A. That's right.
Q. Is that the major part of your business?
A. Identification photographs and passports.
Q. Now, in your experience in taking pictures of people who say they want them for passports, did you ever have any conversation with any of them as to what country they are going to?

The Court: Now, wait a minute. Didn't you just say you weren't interested in what he did with anybody else, in response to Mr. Saypol's question?

Mr. E. H. Bloch: Because I thought that that question was improper, your Honor. I do think that my question is proper, for purposes that I require.

The Court: You want to know whether anybody else told him on any other occasions why they were taking their pictures?

Mr. E. H. Bloch: Yes.

A. Well, why, you get people who like to talk, and well, naturally, you have a conversation, but not often, you know, [fol. 2146] people come in and talkative, like to talk. That is about it.

Q. Who was the gentleman from the Government who came in to see you yesterday? Do you see him in court?

The Court: Look down over there.

Mr. Saypol: Will Mr. Bloch allow me to say that he is not here?

Mr. E. H. Bloch: I certainly will, Mr. Saypol, and I wonder whether you would be good enough to tell the name of the gentleman.

Mr. Saypol: Who is the gentleman?

Mr. Harrington: Mr. Roetting and Mr. Gallaher.

Q. Were there two men who came in to see you?

A. Yes.

Q. What time was this yesterday morning?

A. About 11:30.

Q. In the morning?

A. Yes.

Q. How long did they stay?

A. Well, they came in and showed me the photographs of the people and they didn't stay very long.

Mr. E. H. Bloch: I see. Thank you very much.

Mr. Saypol: I have no further questions.

The Court: All right.

Mr. Saypol: Thank you, Mr. Schneider.

(Witness excused.)

The Court: Any more witnesses?

[fol. 2147] Mr. Saypol: No, that is the Government's case. The Government rests.

The Court: Defense rests?

Mr. E. H. Bloch: Defense rests.

The Court: Do you rest, Mr. Kuntz?

Mr. Kuntz: Just one second, please.

The Court: Do the defendants rest? Is the answer "yes", Mr. Kuntz?

Mr. Kuntz: Not on my part.

The Court: I am asking you whether you rest, too, after the Government's rebuttal?

Mr. Kuntz: We rest, your Honor.

The Court: All right. Now, I had hoped to be able to send it to the jury tomorrow, and I am concerned about whether or not we get it to the jury tomorrow. We have altogether, I would say, about—altogether, both sides, about seven hours of summations that have been asked for. No, I am wrong, about five and a half hours, I am sorry, have been asked for.

I will tell you what we will do, ladies and gentlemen; supposing we start early tomorrow, perhaps we can finish this case tomorrow. Let's start at 9:30 tomorrow morning and see if we can get this case to you, try and get this case to you tomorrow. So the jury may be excused until 9:30.

[fol. 2148] Will counsel please stay here. I will hear motions. The jury will be excused until 9:30 tomorrow morning.

(Jury excused.)

The Court: All right, Mr. Bloch, do you want to make your motion?

ROSENBERGS' MOTION TO DISMISS INDICTMENT AND FOR A JUDGMENT OF ACQUITTAL AND DENIAL THEREOF

Mr. E. H. Bloch: If the Court please, on behalf of the defendants, Julius Rosenberg and Ethel Rosenberg, they move to dismiss the indictment and for a judgment of acquittal upon, one, all the grounds heretofore urged at the commencement of this trial, as well as all the grounds urged at the time of close of the prosecution's case; No. 2, for a judgment of acquittal upon the ground that as a mat-

ter of law, the prosecution has failed to establish the guilt of these defendants beyond a reasonable doubt.

The Court: Motion denied.

Mr. E. H. Bloch: I am not going to go through any arguments, because the Court has just heard them.

The Court: You join in that motion, Mr. Phillips?

Mr. Phillips: I am going to make a different motion.

Mr. A. Bloch: I would like to make a motion on behalf of the defendant Rosenberg.

[fol. 2149] The Court: Yes.

Motion for Mistrial and Denial Thereof

Mr. A. Bloch: I am doing it reluctantly, but I feel it my duty to make it.

I move for a mistrial upon the ground that the frequent questioning by the Court, not intending harm, of course, of witnesses, especially of the defendants, had a tendency of unduly influencing the jury to the prejudice of the defendants and depriving them of their constitutional right to a fair and impartial trial.

The Court: You never took an objection on that ground while I was questioning, Mr. Bloch.

Mr. A. Bloch: Your questions came one at a time, Judge.

The Court: Of course, and there was plenty of time to take your objection at that time, but it may be if I thought that you in any way felt at that time that I was unduly prejudicing the jury instead of trying to keep the issues clearly before them, I may have refrained, but there was never any objection from any of the counsel on that ground, and I think it is purely an afterthought, and I think it is purely done for the purpose of putting anything in the record upon which you might be able to hang your hats in the event there should be an appeal.

[fol. 2150] Mr. A. Bloch: Not at all. It is done in good faith.

The Court: Well, I question it.

Mr. E. H. Bloch: May I say to the Court, as a statement of a lawyer, that we discussed this question very seriously, as to whether or not to make this specific motion at the end of the prosecution's case, and we refrained from making it,

because, we, ourselves, were not satisfied at that time that the motion would have had any real validity.

The Court: Yes.

Mr. E. H. Bloch: But you can understand, your Honor—and I want to say this for the Court, and I, for one, and I think all my co-counsel feel, that you have been extremely courteous to us and you have afforded us lawyers every privilege that a lawyer should expect in a criminal case, but if our conscience would bother us, your Honor, if we didn't make this motion, I hope that your Honor will understand that it is made in the utmost good faith and without in any way trying to impugn the Court.

The Court: Very well, the motion is denied.

Mr. A. Bloch: I may add that my statement is that it was unintentional on your part.

The Court: Motion denied.

[fol. 2151] Mr. A. Bloch: Exception.

Mr. Phillips: If your Honor please, at the close of the People's case, I made a motion which included various parts to it. At that time I stated that my motion is based upon my statement at the opening, that the indictment is brought under a statute, which I then stated is unconstitutional because it violates certainly the First Amendment, equally the Fifth, and probably the Sixth. I make that motion again now, on that ground.

The Court: Denied.

Mr. Phillips: I respectfully except.

I now make a motion on the ground that the indictment as drawn is so vague and indefinite as not to afford our defendant an opportunity to be apprised of the nature and character of the charge and of the facts underlying the charge, so that that indictment is contrary to the provision of, I think it is, subdivision 2 of the Rules of Criminal Procedure, governing the forms of indictment.

The Court: Denied. You need not labor the point.

Mr. Phillips: Your Honor will remember the rule I had in mind.

Now, I say this: While it may not have appeared at the [fol. 2152] time I made the motion at the opening of the case that the motion is made upon real reasoning and logic, now that the case is closed, I ask your Honor to try to

realize the darkness under which we labor in the trial of this case, under the wording of that indictment.

I tell you now that until the opening by Mr. Saypol, I was not aware that there would be attempt to join our client, Morton Sobell, with anything relating to the giving away of atomic energy secrets, underlying the structure of the atom bomb.

Now, that is a statement which I made as a lawyer. That illustrates the vague character of the indictment; and I said to the jury in the opening, "You will find us sitting here, not knowing the precise character of the charge that will be brought against us."

Now, let me say this to your Honor: Suppose for the sake of argument Sobell had come to me when he was arrested; suppose he would prove the language of Elitcher on the witness stand, every word of it, and supposing he had told me a story coincidental and exactly like the story told by Elitcher on the witness stand?

[fol. 2153] Suppose I had then advised him that under that story, it is a story of guilt on his part, understand, I am not admitting any of the facts. Suppose I then said to him that "as a lawyer I have no alternative but to advise you to say that you are guilty, and throw yourself on the court."

Then supposing for the sake of argument at the trial there was all the additional story of giving away atom bomb secrets. Could he have said to me, "What have you done to me, Phillips? I never meant to plead guilty of giving away secrets of the atom bomb."

The Court: No, he couldn't have said that to you.

Mr. Phillips: Pardon me?

The Court: He couldn't have said that to you because as a lawyer you should have said to him, if that had occurred, "No, before I am going to advise you to plead guilty, I want you to understand the law; I want you to understand that the law of conspiracy is this: that once you have joined in a conspiracy, the acts of your co-conspirators are chargeable to you, even if you don't know exactly what they are doing, as long as you have the same common unlawful objective."

Mr. Phillips: I can see your Honor did not get my point.
[fol. 2154] The Court: I get your point.

Mr. Phillips: No, I didn't make myself understood. I said supposing neither he nor I had any idea we were going to try a case of the atom bomb. Suppose all I had was this indictment in front of me and he told me the story of Elitcher, and which Elitcher does not connect him with the atom bomb.

The Court: I still say exactly what I said; it would have been your duty to say, "Look here, Mr. Sobel, you have had some relationship with Rosenberg which I didn't know about, which perhaps you do know about. I don't know. But I want to tell you this, that the law is that if Rosenberg is in this conspiracy with you and he has gone out and done some other acts, and they show that you were in the conspiracy, even if you don't know about these other acts, the Government will charge them against you."

Mr. Phillips: I still haven't made myself understood.

The Court: Well, let us not labor the point. I have your point very clearly. I don't want it labored any more. I think you have made your point very clearly to me.

Mr. Phillips: Then your Honor, this point in relation to the wording of the indictment is not valid.

[fol. 2155] The Court: I think it is. I have already ruled on the question. I ruled before and I rule again that I think that he was fully apprised under this indictment of the charge which he had to meet.

Mr. Phillips: On the assumption that we know more facts than the indictment discloses?

The Court: Correct.

Mr. Phillips: But there are no more facts than the indictment discloses.

The Court: No, not upon that assumption. As I said before, I believe the indictment fully apprised the defendant of the charge which he had to meet, and it is sufficient under the law.

Mr. Phillips: And your Honor's ruling on this motion is——

The Court: Your motion is denied.

Mr. Phillips: I respectfully except.

Now, if your Honor please, on the whole case it seems to me quite clear that no case has been made out of guilt on the part of Sobell beyond a reasonable doubt, and I move for a judgment of acquittal on the ground that the claim in this case are a few statements by Elitcher and nothing else to in the slightest degree connect Sobel with the commission of the crime which was the subject-matter of this trial.

[fol. 2156] The Court: I will let the jury pass on that.

Mr. Phillips: Would you rather take that under advisement?

The Court: No.

Mr. Phillips: I think you should.

The Court: You mean that is what you prefer, but I have to be honest with you.

Mr. Phillips: Your Honor will note my exception.

Mr. E. H. Bloch: May I make just one further motion? I would like to move to strike out the testimony of this last witness, Mr. Schneider, upon the ground that he was not on the Government's list of witnesses and upon the further ground that there is no testimony here that the Government could not with the exercise of due diligence have obtained the testimony from this witness, which if given could have been given as part of the Government's direct case.

The Court: Motion denied.

Mr. E. H. Bloch: I respectfully except.

Mr. Phillips: To avoid any possibility that I left anything out, I want to ask that the testimony of Elitcher does not at all bear out any state of facts of concerted action, concerted action by Sobell and Rosenberg, in connection with the trial of the facts in this case. In other words, the only [fol. 2157] concerted action, allowing every word of Elitcher's to be true, is a concerted action to secure Elitcher and Elitcher's knowledge and Elitcher's information for purposes which Elitcher did not go into. Anything else in Elitcher's testimony which implies what Rosenberg did or implies what Sobell did, is consistent with a theory that each one did it all by himself and on his own and therefore no conspiracy. I don't know if I make myself clear.

The Court: You make yourself very clear, Mr. Phillips. You have a way of expressing yourself which is delightful. Only I don't agree with you.

Mr. Phillips: Your Honor still overrules that?

The Court: Yes.

Mr. E. H. Bloch: If the Court please——

The Court: Oh, no, no, no.

Mr. E. H. Bloch: I am through with all motions, but under the rules I believe that we are entitled to have our requests passed on.

The Court: Yes. Do you want it in advance?

Mr. E. H. Bloch: Prior to the summations, upon the very simple theory that I don't want to say anything in my summation——

The Court: Well, I will tell you what you do, so that we don't waste any time tomorrow, be here at 9:15, and I will [fol. 2157a] tell that to the Government too,—so I will tell you in advance, I will tell you at 9:15 tomorrow just what I am covering in my charge and what I will refuse to charge.

(Adjourned until Wednesday, March 28, 1951 at 9:30 o'clock a. m.)

[fol. 2158] New York, March 28, 1951,

9:15 o'clock a. m.

Trial resumed.

RULING ON PROPOSED INSTRUCTIONS WITH EXCEPTIONS

(The following proceedings were had in the Court's chambers, not within the presence of the jury):

The Court: All right, I am now going to rule on the proposed instructions in accordance with Rule 30 of the Federal Criminal Rules, the proposed instructions on behalf of Julius Rosenberg, Ethel Rosenberg and Morton Sobell.

I understand that you join in these proposed instructions.

Mr. Kuntz: Yes.

The Court: They are incorporated in my charge, I will say, in the language requested or in general form in every respect with the exception of No. 28, which I refuse to charge.

Mr. Kuntz: Which one is that, Judge?

(Mr. Kuntz examines with Mr. E. H. Bloch.)

The Court: And No. 31, which I refuse to charge. Every other request is covered, as I have said, either in the form requested or substantially, in my own language.

[fol. 2159] Mr. Kuntz: Your Honor,——

Mr. E. H. Bloch: May we take an exception, then to the Court's refusal to charge——

The Court: Yes.

Mr. E. H. Bloch: —items No. 28 and No. 31 of the proposed charges of the defendants, either in the specific words as outlined or the substance thereof.

The Court: Very well.

Mr. E. H. Bloch: And I also state to the Court that so far as item No. 42, I am reserving that until I hear your entire charge.

The Court: I have incorporated that.

Mr. E. H. Bloch: Oh, you have?

The Court: Yes.

Mr. E. H. Bloch: That has been granted.

The Court: It is granted substantially with certain additions as made.

Mr. E. H. Bloch: All right.

Mr. Kuntz: Judge Kaufman, we purposely waited until the end of the trial to ask for one additional charge, because we did not know what the rebuttal would bring out; even though it might not affect our client directly, it might indirectly.

We would suggest that your Honor charge that if the jury does not believe Elitcher or if they have reasonable [fol. 2160] doubt as to the truth of his testimony they must acquit Sobell.

The Court: I am covering that. I am saying substantially the only testimony that they must consider as to whether or not Sobell is in the conspiracy is Elitcher's, plus the flight testimony.

Mr. Kuntz: All right.

Mr. Phillips: If they have reasonable doubt——

The Court: If they decide he is in, they will consider that.

Mr. Phillips: But if they have a reasonable doubt as to the truthfulness of his testimony——

The Court: Well, I covered that.

Mr. Phillips: You covered that.

The Court: Now as to the Government.

Mr. Saypol: Well, reasonable doubt not as to his testimony but as to the whole case.

The Court: Not reasonable doubt but they have to believe him. They have got to believe him. That is the way it is put. If they don't believe him there is no case. They must believe him and then they can only find him guilty if they find that he is guilty if they find that he is guilty beyond a reasonable doubt.

Mr. Kuntz: Would you say that they must believe?

The Court: I say substantially in that form, that the [fol. 2161] only testimony that they can consider in connection with Mr. Sobell is testimony of Elitcher plus the flight testimony as to whether or not he is in the conspiracy.

Mr. Kuntz: Now, let me ask——

The Court: That was without your request, may I say.

Mr. Kuntz: This is a request, but not to charge.

The Court: Do you want it on the record?

Mr. Kuntz: No.

The Court: Off the record.

(Discussion off the record.)

Mr. Saypol: On the record: Judge Kaufman, may I intersperse and interrupt? Mr. Lane calls to my attention in this discourse between Mr. Kuntz and the Court there has been overlooked the testimony of Danziger as it affects Sobell.

Mr. Kuntz: Danziger was only on the question of flight.

The Court: He is a flight witness, and that is what I say.

Mr. Saypol: All right.

The Court: I said before, Elitcher and all the flight witness.

Mr. Saypol: All right. I do not know whether your Honor [fol. 2162] intends to review the testimony and the evidence.

The Court: I am reviewing it in very general form—not specifically but in general form; and I am characterizing what I understand to be your case and I am characterizing what I understand to be the defense case.

Mr. Saypol: Well, I intend to mention Danziger in my case.

Mr. Kuntz: Well, I intend to also.

Mr. Saypol: Good.

Mr. Phillips: OF course, your Honor understands despite our requests to charge in relation to Elitcher's testimony this morning, that I still will except to your theory of the nature of the conspiracy.

The Court: I wouldn't be surprised, Mr. Phillips, if you will except to everything I tell the jury, including when I tell them to do justice in the case.

Mr. Phillips: No. Why do you come to that conclusion?

The Court: You do not even know what I am going to charge yet, and you are saying of course you want me to understand that you are going to except.

Mr. Phillips: I had very little objections in this case. I say to the theory that you expressed in this case.

The Court: Now off the record.

[fol. 2163] (Discussion off the record.)

Mr. Saypol: How about our requests?

The Court: On your requests I would say every one of yours is all right, with the exception of No. 12, which I am covering generally in my own form—that is on corroboration.

Mr. Saypol: And we have submitted a supplemental one.

The Court: Yes, that will be covered.

Mr. E. H. Bloch: If the Court pleases, in connection with the Court's disposition of the Government's requests——

The Court: I am not saying that I am going to charge in their very language, but I am going to cover generally.

Mr. E. H. Bloch: You see, it is on account of formulations that I have reservations.

The Court: Which one?

Mr. E. H. Bloch: For instance, request No. 4, in that this argumentative, in my opinion, rather than stating the law as it may be on the charge, but I am going to wait until the Court charges and see the context at that time.

Then No. —well, the same kind of objection goes to request No. 8, and certainly an objection is going to go to [fol. 2164] request No. 10; and as far as request No. 11,

with respect to accomplices, I submit that that ought to be clarified to the extent that an accomplice's testimony is to be considered on a different standard.

The Court: I am using yours pretty much.

Mr. E. H. Bloch: Then I suppose if both are taken——

The Court: I am using yours pretty much on accomplices. I think you asked me to name the accomplices in yours, and I do.

Mr. E. H. Bloch: Yes, sir. And so far as request No. 14, I do not believe that covers the Gorin case or the Heine case——

The Court: My charge was drafted five days before I received the Government's requests, that I can tell you.

Mr. E. H. Bloch: All right.

The Court: I cover the Gorin case in my own language, as I did the others.

Mr. E. H. Bloch: Just the last one, request No. 15. I would like to call the Court's attention that I object to that because of the fact that the intent mentioned in that request is not the intent required by the statute. It is not just generally an evil intent, but must be a specific intent to advantage a foreign government——

[fol. 2165] The Court: Oh, listen, I will cover that subject.

Mr. Kuntz: Judge Kaufman, I wrote out a few words, what I had suggested. Can you read it (handing to the Court)?

The Court: (After examining) As I said before, I am going to charge—I haven't got my charge with me here, so I can't tell you exactly the language I use, but I do cover the testimony as it pertains to Sobell, and I tell the jury what they are to consider and what they must believe.

Mr. Kuntz: But isn't that a fair request?

The Court: No. The alternative isn't exactly proper. If they do not believe the testimony of Elitcher and the testimony of these other witnesses, then there is no case.

Mr. Kuntz: No, no——

The Court: Just a moment. Now if they don't believe that the Government has proven beyond a reasonable doubt the guilt of Sobell, even if they do believe the testimony, then they must acquit also.

Mr. Kuntz: Well, that I certainly ought not to object to, but if they do not believe Elitcher, there is nothing to decide.

Mr. E. H. Bloch: Just one last word: I assume that all [fol. 2166] defendants reserve our rights to object to any portions.

The Court: I will call you up to the bench after the charge and at the bench you will be able to except.

Mr. Phillips: Judge, do I understand the script that my associate——

The Court: Listen, you have had over a week's notice to give me requests. I hounded you and pounded you and then up comes a formal request to charge. I was drawn by Mr. Bloch's office in which each and every one of you joined. Then you suddenly hand me a slip of paper. When I get through with my charge you can make whatever exceptions you want, and you can make whatever requests you want and I will at that time deal with it.

Mr. Phillips: All right. I just did not want you to think——

The Court: I know you are not waiving anything. I have come to the conclusion that you are not waiving anything.

Mr. Phillips: No. I do not want you to think that we deliberately thought of it at the last minute. We did not happen to think of it. We made the work as easily as possible. We joined in the other man's requests.

(The following proceedings were had in open Court in the presence of the jury:)

[fol. 2167] SUMMATION BY MR. E. H. BLOCH

Mr. E. H. Bloch: May it please the Court, ladies and gentlemen of the jury, it is usual when you come into a house to say good evening, and it has sprung up in court that there are certain social amenities, certain preliminaries, certain graces that one goes through before one gets into the facts of a case, and I would like to say to the Court on behalf of all defense counsel that we feel that you have treated us with the utmost courtesy, that you have extended to us the privileges that we expect as lawyers, and

despite any disagreem-nts we may have had with the Court on questions of law, we feel that the trial has been conducted and we hope we have contributed our share, with that dignity and that decorum that befits an American trial.

I would like to also say to the members of Mr. Saypol's staff that we are appreciative of the courtesies extended to us, and even though Mr. Saypol and I have engaged in a certain amount of repartee, it doesn't mean anything; it happens in every trial; and we feel, as we come here in the closing stages of this case, that as much has been done both by the prosecution and by the defense to present to you the [fol. 2168] respective sides of this controversy.

Now I want to take your minds back, ladies and gentlemen, to something you were asked on your voir dire examination, to something that you were asked by me and I think as well by other counsel when you took your seats in the jury box: We were all very careful, very meticulous, the Court and counsel on both sides, to get a jury, a body of American men and women who would come to this case with an open mind and who would decide this case on the evidence that was presented in this courtroom in this court from this witness chair that is now silent, but which was so eloquent for many, many days. And we wanted that because if a juror comes in to try somebody, to determine his guilt or his innocence in a criminal case, and this would be true in any case, if he or she should not come in with a preconceived notion or a preconceived judgment or impression which would make it impossible or very difficult to decide the case on the facts as presented and on the law as the Court will give it to you later after the summations of all counsel.

The fear that an impartial jury could not be secured was particularly important in this type of case. Now, all of you are New Yorkers or you come from the environs of New York. We are a pretty sophisticated people. People can't put things over on us very easily. We are fai-ly wise in [fol. 2169] the ways of the world and the ways of people and we all know that there is not a person in this world who hasn't some prejudice, and you would be inhuman if you didn't have some prejudice. But we ask you now as we asked you before, please don't decide this case because you

may have some bias or some prejudice against some political philosophy.

I think by the time we get through here and by the time the Court charges you, you will find out as you have been told repeatedly that these defendants are being charged with conspiracy to commit espionage. This is a very, very serious crime, one of the most serious crimes that we know under our law. They are not charged with being Communists, because if they were charged with being Communists they would not be defending themselves against the indictment in this case. It would be an entirely different indictment. They would be charged with different acts.

THere is one question for you to decide, just one: Did these defendants agree and confederate with each other and with others to transmit information relating to the national defense of the United States to the Soviet Union with that intent or reason to believe that that information so transmitted would be advantageous to the Soviet [fol. 2170] Union.

Now, although the statu-e reads—and the Court has read you the statute and I merely want to recall it to you for the moment—that it is a crime to transmit this information, where there is intent or reason to believe that it would be to the injury of the United States or to the advantage of a foreign power, there is no claim here that this transmittal was to the injury of the United States. I merely state that to you so that you will understand as clearly as I can express it to you what the charge is. If you want to convict these defendants because you think that they are Communists and you don't like communism and you don't like any member of the Communist Party, then, ladies and gentlemen, I can sit down now and there is absolutely no use in my talking. There was no use in going through this whole rigmarole of a three weeks' trial. That is not the crime. The crime is conspiracy to commit espionage, and if you find, or if you think—and that thinking cannot be eliminated from your mental processes—that these defendants are Communists and you want to convict them on that, I say to you, you are not convicting on the crime that they are being charged with. Please bear that in mind.

Now, I said we are sophisticated New Yorkers and we can

[fol. 2171] use our common sense and our understanding of the political climate of our times. We know that there is a great tension now in the world. We know that there is great tension by reason of the differences between this country and the Soviet Union. We know that communism is being attacked repeatedly here in the United States as a doctrine which is inimical to the interest of the United States. But believe me, ladies and gentlemen, I am not here; other defense counsel are not here as attorneys for the Communist Party and we are not here as attorneys for the Soviet Union. I can only speak for myself and my father. We are representing Julius and Ethel Rosenberg two American citizens, who come to you as American citizens, charged with a specific crime, and ask you to judge them the way you would want to be judged if you were sitting over there before 12 other jurors.

I say that because unless you keep your minds open and your minds should be open even at this time, although you should have done a lot of thinking about this case up to this point, unless you do that, then there is a farcical trial.

Now then, let's come to the evidence in this case, not the evidence that has been interpreted by some layman or some newspaper person who wants a lot of publicity; not any [fol. 2172] perverted inferences that are drawn from testimony. You know more about this case than anybody in the United States, because nobody has listened so attentively to the evidence as all of you. You know, we lawyers sit there and you think we go through certain motions and we do, and we are busy, but every once in a while we take a look over and we try to look at your faces and we try to see underneath your faces and we are always hoping that maybe we have made a point that hits your understanding and you will be sympathetic. We try to woo you.

Forget about us. I told you at the beginning, we are mechanics; we are mechanics. We are here for the purpose of presenting to you, through witnesses, a client's case; and I told you also at the beginning that lawyers usually dominate a courtroom. We have mouthpieces; we are glib. Forget about our mouthpieces; forget about our glibness. Keep your mind fastened on the evidence and it is the evidence that I want to discuss with you.

Now, you have been fortunate in a way this is a very celebrated case and you have been unfortunate in another way. You have been fortunate because you have seen unfolded before you one of the most moving dramas that any human being could concoct. You have seen a brother testify [fol. 2173] against his sister, in a case where her life might be at stake. You have seen issues dealing with the atomic bomb, the most terrible and destructive weapon yet invented by man. This case is packed with drama. Playwrights and movie script writers could do a lot with a case like this. You have been fortunate. You had a front seat.

But because you had that front seat, you also are unfortunate, because now your job has to be done. You have a very heavy, you have a very serious responsibility. You have to weigh the guilt or innocence of another human being, charged with a serious and grave part, and you have to determine from your judgment, from your conscience, from your honest understanding and conviction, whether or not these human beings, that you are judging, are going to be convicted, with a possible death penalty, or whether or not these human beings are going to be acquitted.

I am confident, I am confident that when you took your oaths, you meant what you said and you swore to. I am confident you are going to analyze, scrutinize, most carefully probe every piece of evidence that has been introduced into this case and begin to weigh and begin to evaluate and say to yourselves, "What is the probability here?" And "What is the probability there?" Because [fol. 2174] in the last analysis you, sitting here in this jury box, constitute the bedrock of American justice, which is founded upon the concept that it is the average man and woman that has the wisdom to decide what is a fact and what is not a fact. You are all intelligent people. I say again, you are developed people; you are fortunate in living in a big city like New York, where ideas percolate and are exchanged, and in the course of that we become wiser people. People can't put things over on us easily.

I want to try to marshal the facts for you. Theoretically, a lawyer, when he sums up, is supposed to aid the court.

We are supposed to recapitulate the testimony for you. We are supposed to make a resume for you, because nobody expects you to remember, especially in a trial like this, everything that has taken place and has been testified to during three weeks of packed testimony. We are supposed to give you a bird's eye view. That is the theoretical aspect.

But I would be kidding you and I would be kidding the Court if I told you that I could do this so objectively, so dispassionately as not to constitute to be a special pleader. I am a special pleader, and if in analyzing the testimony for you I naturally will put the most favorable inferences to benefit my clients, don't be surprised and take it with a [fol. 2175] grain of salt, but what I want you to do is to listen — what I have to say about the analysis of the evidence and groove your mind along that level of thinking, so that you can counterpose the things that I said to you and the inferences that I say you should draw from this evidence against the things that Mr. Saypol will say to you when he comes to sum up on behalf of the prosecution.

Let me say in short that what I am doing here is giving you one side of a picture. Mr. Saypol will give you another side of the picture, and all I am asking you to do is, when you go in the jury room, before you arrive at a final determination, take every argument I give you, subject it to analysis, tear it apart as much as you can, and if what I say makes sense, if it makes logic, then I hope that you will accept it. I will expect you to accept it if it means something to you, if it makes sense to you, if your common sense, if your experience in your life dictates that what I say about this case has any bearing or has any validity.

Now, let's see. Two kinds of evidence came out of that witness box. One kind of evidence we lawyers call "oral evidence." That is the evidence that comes out of the mouths of people. Then we have another kind of evidence that we call "documentary evidence." Documentary evi [fol. 2176] dence is evidence that is tangible, that is palpable, that is capable of being seen, and those are what we call exhibits; and I would like now to take the exhibits in this case, not only for the purpose of refreshing your

recollection, but for focusing your attention upon what I consider to be a very important element in your deliberations.

Now, what are these exxhibits? Here is Government's Exhibit 1. Government's Exhibit 1 is a true copy of the security regulations at Los Alamos Project. Is there any dispute that this is a bona fide document? Is this exhibit in the handwriting or has it been manufactured by or is it a product of the work of the defendants Julius Rosenberg and Ethel Rosenberg? Is there any doubt that it is not?

Government's Exhibit 2 is a sketch. Whose sketch is that, ladies and gentlemen? Is it Rosenberg's sketch? Is it Ethel Rosenberg's sketch? Or is that a sketch that was drawn by David Greenglass? Any doubt about that? I think not.

[fol. 2177] Government's Exhibit 3 is a picture of Mike and Ann Sidorovich. Is that Rosenberg's making? Is that Ethel Rosenberg? These are friends or were friends of the Rosenbergs. Any dispute about that? No dispute.

Government's Exhibit 4 is a Jello box. You have seen that. This is not claimed to be the specific Jello box that was used at the specific time. This is a Jello box. Is there any claim that this Jello box came from the Rosenbergs? This is a Jello box. Now, the testimony is a Jello box like that was cut up in the Rosenberg's house, but is there anything in this exhibit from which you can say "Yes, here it is, this is it." Any question about that?

Then you have also in here of course the sides, the cut-up sides of this Jello box, Government's Exhibits 4-A and 4-B.

Then you have Exhibit No. 5. The Exhibit No. 5 is a photograph of Harry Gold. Does anybody dispute that that is Harry Gold? You saw him on the stand. Is there anything in the case that Mr. Rosenberg was over here, or just Harry?

Government's Exhibits Nos. 6 and 7 are sketches. You will remember those are the sketches that Greenglass gave to Gold out in Albuquerque, New Mexico, on June 3, 1945. [fol. 2178] They were prepared for this trial. Is this Rosenberg's sketch or is it Greenglass' sketch? Is there any doubt that this is Greenglass' sketch? And isn't that

true of Government's Exhibit 7 which was given to Gold at or about the same time?

And then there is Government's Exhibit 8 which is empty. That is the one that has been impounded. That is a sketch made in the handwriting or by Greenglass. Is there any dispute about that?

Now we come to Government's Exhibit 9. Government's Exhibit 9, 9-A and 9-B are photographs of the Greenglasses. Any dispute about that? You saw the Greenglasses testify here. Do you see any fingerprints of the Rosenbergs here? Do you see any pictures of the Rosenbergs here? No, these are the Greenglasses.

Government's Exhibit 10 is a piece of brown wrapping paper. The $4000. that Greenglass got came in this, and while I am talking about this, I would just like you to tuck back in your mind this idea: If Rosenberg handled this, if he brought this $4000., as Greenglass claims, to Rosenberg in June 1950, in order to enable the Greenglasses to escape the country, I am just wondering how it is that this either wasn't subjected to fingerprint analysis or that no fingerprint expert came here to tell us whose finger-[fol. 2179] prints were upon that wrapping paper. But is there anyt-ing as you look at this exhibit which would bring it home to Rosenberg? You can have a paper like this in your house and I could have a paper like this in my house. In other words, this exhibit, as some of the other exhibits, are only connected with Rosenberg by reason of what people said, but the exhibit as you look at it by itself doesn't connect Rosenberg with anything. Now you know these things are very eloquent. All the words in the world cannot wash away something you can see and something you can feel. So far there isn't a single exhibit here that you can say to yourself outside of oral evidence is Rosenberg's. Is there any dispute about that?

Now let us go further. 11 in evidence is a picture of Anatoli A. Yakovlev. That is the Russian who has been mentioned in this case. He was also known as John. Do you see Rosenberg's picture alongside of him? This is a picture of a man. Can anybody dispute that this is a picture of Yakovlev? You never saw that man. I never saw that man, but for the purposes of this case this is his

photograph. There isn't anything that can be attributable to Rosenberg except through the mouths of people.

[fol. 2180] The next exhibit is the same thing. A photograph of an English scientist, a traitor to his country, Dr. Klaus Fuchs. Do you see Rosenberg around? No, you don't.

The next photograph is what? The next photograph is again a photograph of Dave Greenglass and Ruth Greenglass. They were better looking then, but otherwise, is there any dispute who these people are? Do you see the Rosenbergs around? Do you see the Rosenbergs doing anything in a conspiratorial way, from this picture from which you can say ah, ah, there it is, it is right before my eyes. People say they are innocent. How are you going to get around that? Nothing of the kind. There is the plain ordinary photograph of the Greenglasses.

Now let us go on. Exhibit 14. Now what is this? Arthur Thomas—I am sorry, I can't read your handwriting, Mr. Kilsheimer. Can you help me out?

(Mr. E. H. Bloch confers with Mr. Kilsheimer.)

Mr. E. H. Bloch: Yes, 14-A and B are the papers that were used by Gold and Yakovlev in order to communicate with each other. This is an identification. You remember that testimony of Harry Gold. Do you see Rosenberg? Any evidence here that this came from Rosenberg? I don't think [fol. 2181] there is any dispute, that any such claim can or would be made.

Now let us go to Government's Exhibit 15. Government's Exhibit 15 again is a State Department certificate and I don't think I even have to open it up but I will just be thorough. A picture of Yakovlev. Anything about Rosenberg here that you can see with your eyes? I submit not. I don't think there is any dispute about that.

Now then, we have Government's Exhibit 16. This is a photostatic copy of the register of the visit of Harry Gold made to the Hotel Hilton in Albuquerque, New Mexico, in early June 1945. Made by Rosenberg? No. Harry Gold. Do you see anything here, looking at this or looking at any of the other exhibits, just looking at them from which you can say "Ah, ah, there it is, Rosenberg was in on this." So far have you seen anything from looking at these exhibits

from which you as people who never heard about this case could say Rosenberg is in it?

Now then, Exhibit 17 is a check on an Albuquerque bank for $400. That is the $400. that Ruth Greenglass, that sweet little innocent girl who didn't know what she was doing, deposited from the proceeds of the $500. that she got from Gold to aid her husband in spying. Anything about Rosen-
[fol. 2182] berg there that you can see in this paper? Take these exhibits in with you. You are entitled to have them in your deliberations.

Now then, we have a lot of exhibits here. 18 to 20, all dealing with Sobell's trip to Mexico. Anything in any of these exhibits? You take them. I am not going to go through them. Anything in print here from which you can say that Rosenberg was implicated in this conspiracy? Not one piece of paper, not one document.

Now, Exhibit 19 is a letter from E. H. Calvert, Captain of the Corps of Engineers District Intelligence Services to the personnel at Los Alamos in which he says under no circumstances should the name Neils Bohr be used in any correspondence eman-ting from your office. Bohr will always be referred to as Nicholas Baker.
[fol. 2183] That is the top personnel at Los Alamos. I want you to remember that in connection with some of the testimony that I am going to analyze for you. Neils Bohr's name was a secret. It was a top secret at Los Alamos. Nobody except a very few away at the top there were supposed to know that there was anybody like Dr. Neils Bohr, one of the most famous scientists in the world, at Los Alamos.

We will find out who found out about Neils Bohr and when, when we come to Mr. David Greenglass.

Then we have here Exhibit 20. Again, Exhibit 20 is a copy of the regulations that govern the personnel at the Los Alamos project. I believe it was Colonel Lansdale who testified to this, and on the basis of his testimony it was introduced in evidence. It may have been Mr. Derry—one of the two, but it is relatively unimportant. Is there anything here which you can look at and say, "Ah ha, Rosenberg's in on this".

Now, Exhibit 21 again deals with the card of M. Sand.

That deals with this Mexico business of Sobell; and here is another exhibit relating to Sobell down in Mexico; and here is 23-A and B, dealing with another registration of Sobell down in Tampico, Mexico; and here are air line tickets of a certain air line dealing with Sobell's trip to [fol. 2184] Mexico; and here is a manifest dealing with the Sobell trip to Mexico; and here are the shipping lenses having to do with the Sobell trip to Mexico.

Is there anything here which in any way connects Rosenberg with this conspiracy, by looking at the most convincing kind of evidence that a jury can get?

Now we have got something. Now we got Exhibit No. 28. Exhibit No. 28 is a number of console tables. These are not claimed to be any of the console tables in Rosenberg's house. The only thing that witnesses testified to is that one or two of these resemble a console table in Rosenberg's house. Did this exhibit come from Rosenberg's possession? It did not. This came from the Government who attempted to elucidate for you the testimony of a witness, the oral testimony of witnesses. Is there anything, looking at this exhibit, from which you can say, "Ah ha, Rosenberg is in this"?

I do not know whether this was introduced. Was this introduced in evidence (indicating)?

Mr. Harrington: Yes, it is.

Mr. E. H. Bloch: I talk of Exhibit 28. I do not know whether it should be—it is unimportant. There is the inside [fol. 2185] of the photo gallery of the last witness, Mr. Schneider.

Is there anything, looking at this, from which you can state or infer that Rosenberg was implicated in this conspiracy?

The Court: That has a separate number, 32.

Mr. E. H. Bloch: Pardon me?

The Court: This is Exhibit 32.

Mr. E. H. Bloch: It is in 28. That is why I am confused. It may have been an error.

Now, let's see. Then there is 31. Let's see what this is—we are almost through with the exhibits—yes.

I am sorry, before we get to 31, we got an exhibit, we got an exhibit here that ties Rosenberg up to this case.

They got it, they got it in Rosenberg's house. Here it is (indicating). It's a tin can. No question this came from Rosenberg's house. This is it, gentlemen. This is the only piece of documentary evidence that the Government has produced in this case, trying to tie up Rosenberg with this crime.

Let me repeat that. This is the only documentary evidence in this case that has been produced by the Government to tie up Rosenberg with this case. And let's see about this terrible exhibit. It's a can. It says, "Save A [fol. 2186] Spanish Republican Child", and it is issued pursuant to a license from the City of New York, Welfare Department. And this bears a date of somewhere around 1948, but that is not important.

Hollow, hollow—like the case against Rosenberg, as I think I can convince you after we analyze this testimony and analyze the kind of people who testified here and why they testified.

Yes, they got him; they got him with the goods, with a tin can.

Tell me, what is this tin can? I don't care whether you are in favor of Franco, and I don't care whether you are in favor of the Loyalists. That has to do with a person's political beliefs, but can you tell me, and can you tell anybody, and most important, can you tell yourselves in your consciences, that there is anything in this can from which you can state or infer that Rosenberg was guilty of conspiracy to commit espionage?

We got another exhibit. We got another exhibit that ties up the Rosenbergs right in this case. It's a nominating petition, signed by Ethel Rosenberg in 1941. And there, as you will see, with many others she petitioned that Peter V. Cacchione should be nominated so that he could run legally for office as Councilman. Incidentally, you can use your [fol. 2187] memory. Peter V. Cacchione was a Councilman of the City of New York. Nobody ever accused Peter V. Cacchione of doing anything wrong or illegal while he was a Councilman. The mere fact that you or I may not have liked Peter Cacchione's politics is something else again, but this is the evidence, the only documentary evidence that you have so that you can be convinced that you have got some-

thing here, that you can see, that you can feel, that the defendants, if they claim they are innocent, can't get away from.

Does this tie Ethel Rosenberg up with a conspiracy to commit espionage? Ask yourselves that.

And of course I know you are going to be honest with yourselves and admit very readily—not out loud, but very readily that there isn't one piece of documentary evidence in this case to tie the Rosenbergs up with this conspiracy.

Now, there has been testimony about the Federal Bureau of Investigation. They investigated this. I think every American citizen has enough confidence in the FBI to feel that they do a highly competent job when they conduct an investigation, and I think you have a right to feel that in a case of this importance they did more than a competent [fol. 2188] job. They stopped at nothing in their investigation and they would have been derelict in their duty if they did nothing less, to try to find some piece of evidence that you could feel, that you could see, that would tie the Rosenbergs up with this case.

Is that a proper assumption for you to make? I think, and I submit that it is, and yet this is the documentary evidence. These are the exhibits in this case. There are no other exhibits. This is the complete documentary evidence adduced by the Government to tie the Rosenbergs up with this case.

Now, of course, I don't think there is any doubt that if you had this evidence and this evidence alone, you would go into the jury room, you might light a cigarette, you might not light a cigarette; you would come back in half a minute and you acquit the Rosenbergs. And of course the case is not as simple as that. I point out these documents to you at this time because you have a right, as people with common sense, to assume and infer that if the FBI in their investigations found anything belonging to or in the possession of the Rosenbergs, that would tie them up to this case, they could have produced it in court. There is testimony here that the FBI searched the Rosenberg home and [fol. 2189] they took a number of things. Of course the watches have not been introduced in evidence but they will be shown to you. I think both sides will agree that they

should be shown to you, even though they are not strictly marked in evidence.

Is there anything in the Rosenberg home, is there anything—is there any object, is there any piece of evidence that you could see, that you could do something with, without speculating, that ties up the Rosenbergs in this case? I submit not.

Now this case, therefore, against the Rosenbergs depends upon oral testimony.

[fol. 2190] Now here I want to say something to you. I want you to apply the experience of your lives. I want to say to you that you should judge the testimony of every witness that came on this witness stand the way you would judge him if you met him in private life. You have met people in your lives whom you trust. You have met people in your lives whose words you would take for anything at the snap of a finger; and you have met people in your lives who would swear on a stack of a thousand Bibles and you wouldn't believe them. Is that true or isn't it true? I submit that I have a right to expect that you have the same experiences in life as most other people and that you judge people by pretty much the same standards that other people do; and so, when we come to the witnesses, it is not only what they said—it is who said it. Is the person who said it capable of belief ordinarily? Would you believe a perjurer in your ordinary dealings? Ordinarily, would you believe a crook in your dealings, in your private life? Ask yourself this question or these questions, because I am now going to come to some kind of an analysis of the witnesses.

See, that witness chair is empty now. It is silent. But machines weren't up there talking; human beings were up there talking, people of flesh and blood, people who had hopes, people who have fears, people who have ambitions, [fol. 2191] human beings; and I want you to judge their testimony as you saw them as human beings, and we got a pretty good picture here of them testifying, because you have been fortunate, because the Judge has been fairly lenient in permitting counsel to develop for you the kind of people who testified here.

You know, you could teach a parrot to get up there and tell a story, but you wouldn't believe a parrot. You can

teach anybody—anybody, to get up there and tell a story. That doesn't mean that you can believe him. Before you believe anybody who was willing to swear away the life of somebody I think that justice dictates that you consider the type of person testifying.

Now, who are the main actors here in this big drama? The main actors, in my estimation, are four. There is Dave Greenglass; there is Ruth Greenglass—that is one team, on this side; and in the other corner of the ring there is Julius Rosenberg and there is Ethel Rosenberg.

Now, remember, an indictment is a piece of paper. It is only a way by which a defendant comes to trial. I want you to judge these four, each of these four, as human beings, as certain kinds of people, and in the last analysis, what you have to determine for yourself is whether or not the Greenglasses were telling the truth or whether the Rosen- [fol. 2192] bergs were telling the truth.

Let us take these people. These people painted themselves, by getting up on that witness stand and talking and describing their lives and their backgrounds and their actions and their activities, they painted themselves for you, and we lawyers tried our best to round out the picture, so that you know who was giving testimony and whether or not you could give credence to the stories that came out of the mouths of these people.

Now, there are certain secondary characters here; there are certain minor characters. We are going to come to them. But this is a case of the Greenglasses against the Rosenbergs. That is what this case reduces itself down to.

Now, let us take Dave Greenglass. This didn't come out of my mouth. This came out of his mouth. Is he a self-confessed spy? Is there any doubt in any of your minds that Dave Greenglass is a self-confessed espionage agent? He characterized himself that way. What did this man do? He took an oath when he entered the Army of the United States. He didn't even remember what the oath was. That is how seriously he took it. But in substance, he swore to support our country. Is there any doubt in your mind that he violated that oath? Is there any doubt in your mind that he disgraced the uniform of every soldier in the United [fol. 2193] States by his actions?

Do you know what that man did? He was assigned to one of the most important secret projects in this country, and by his own statements, by his own admissions, he told you that he stole information out of there and gave it to strangers, and that it was going to the Soviet Government. Now, that is indisputed. I would like Mr. Saypol, or anybody who is going to sum up on the part of the Government to refute that. Is there any doubt in your mind about that?

You know, before I summed up, I wanted to go to a dictionary and I wanted to find a word that could describe a Dave Greenglass. I couldn't find it, because I don't think that there is a word in the English vocabulary or in the dictionary of any civilization which can described a character like Dave Greenglass.

But one thing I think you do know, that any man who will testify against his own blood and flesh, his own sister, is repulsive, is revolting, who violates every code that any civilization has ever lived by. He is the lowest of the lowest animals that I have ever seen, and if you are honest with yourself you will admit that he is lowest than the lowest animal that you have ever seen.

This is not a man; this is an animal. And how he got up there, and how he got up there. Did you look at him? I [fol. 2194] know you did; you watched him; all your eyes were fastened on him, just as people are fascinated by horror; and he smirked and he smiled and I asked him a question, so that it would be in the cold printed record, "Are you aware of your smile?" And do you know the answer I got? Do you remember it? "Not very." Listen to that answer, "Not very."

Well, maybe some people enjoy funerals; maybe some people enjoy lynchings, but I wonder whether in anything that you have read or in anything that you have experienced, you have ever come across a man, who comes around to bury his own sister and smiles.

Tell me, is this the kind of a man you are going to believe? God Almighty, if ever a witness discredited himself on a stand, he did. What kind of a man can we disbelieve if we are going to believe Dave Greenglass? What is the sense of having witness chairs? What is the sense of having juries subject witnesses' testimony to scrutiny and analy-

sis? Is that the kind of a man that you would believe in your own life or would you punch him in the nose and throw him out and have nothing to do with him because he is a low rebel? Come on, be honest with yourselves, ladies and gentlemen, is that the kind of testimony that you are going to accept?

I am going to come to some other aspects of his testimony [fol. 2195] to show the improbability of it, but take the man; I want to know; I want to know, and I want you to know who it is here who is putting the finger on the Rosenbergs.

And he was arrogant; he was arrogant. He felt he had the Government of the United States behind him. He had a right to be arrogant; he had a right to be arrogant, because I want to say right now that the Greenglasses put it all over the FBI and put it all over Mr. Saypol's staff, and I submit that they are smarter than the whole bunch. They sold them a bill of goods. Every man sitting over here is an honest man. The FBI representatives, Mr. Saypol and his staff, every man of them, they are doing their duty, but you know, even the smartest of us can be tricked, and do you want me to show you how they were tricked?

Ruth Greenglass admitted here that she was in this conspiracy. Is there any doubt about that? Is there any doubt that in the middle of November she came out to Albuquerque and tried to induce her husband to sell secrets? [fol. 2196] Is there any doubt that she grabbed Gold's money and deposited it in the bank? Is there any doubt that she gained by the illegal fruits of her husband's venture? Is there any doubt that she knew all about it?

Ruth Greenglass has never been arrested. She has never been indicted. She has never been sent to jail. Doesn't that cite you as strange? If this is such a terrible crime, and I tell you gentlemen it is a serious crime, a most serious crime, don't you think that the Greenglasses put it over the Government when Ruth Greenglass wasn't even indicted? Something peculiar, and I am not attributing anything wrong to the FBI or the prosecutor's staff, and let us get that straight right now. With all due respect I think the Greenglasses sold you a bill of goods. We are going to come to how they sold this bill of goods, too. We are going to

find out how these people even on the stand to minimize their part. Dave Greenglass said he got into it because he had a hero worship of Julius Rosenberg, and yet every action of that man negatives any such idea of hero worship. You heard the story about the fighting in the business; it doesn't sound like hero worship. Ruth Greenglass got out. She walked out and put her sister-in-law in. That was a deal that the Greenglasses planned and made for themselves, and they made it—they may not have made it by express [fol. 2197] agreement with the Government, and I don't think the Government would countenance anything like that, but tell me, do actions speak louder than words? Is the proof of the pudding in the eating? Is Ruth Greenglass a defendant here?

You try to explain to yourselves how Ruth Greenglass got out of this. She is a free woman. She is taking care of her kids. Maybe I was a little too harsh on Dave Greenglass. Because if the human race can produce a Dave Greenglass I am afraid we would all get terribly pessimistic about the future, but there is always something good in every human being, some trait of warmth, of love. Dave Greenglass loved his wife. He loved her more than he loved himself. I asked him that question. There was a reason for asking that question. And, ladies and gentlemen, this explains why Dave Greenglass was willing to bury his sister and his brother-in-law to save his wife. Yes, there were other factors of course. He had a grudge against Rosenberg because he felt that Rosenberg had gyp-ed him out of a thousand dollars, but that would not have been enough to explain Greenglass's act.

You know, in 1950 the Greenglasses weren't playing with marbles. The Greenglasses knew that their lives were in jeopardy. These are the biggest stakes that human beings [fol. 2198] can play for, and in order to save one's life or the life of one whom one loves, people are capable of terrible things at the expense of others. This really is the crucial question in this case. You are going to be told why did Dave Greenglass do it? What motive did he have? Well, let us see. Dave Greenglass knew that he was an espionage agent. And incidentally, I want you to consider when he became an espionage agent. Do you remember the testi-

mony when his wife said that she came out to him on November 29, 1944, to Los Alamos, to Albuquerque, which is a near town, on their second wedding anniversary, and both of them said that Rosenberg sent them? They wanted some information. Greenglass at first, according to his testimony rejected it. I don't know how many miles Albuquerque, New Mexico, is from New York City, but it is somewhere around 1500. The Rosenbergs weren't there. Nobody was standing with a gun at Greenglass's head, but the next morning he was willing; not only was he willing, but he gave information to his wife right there and then. And what kind of information did he give? He gave his wife the names of Dr. Neils Bohr, Dr. Oppenheimer and Dr. Urey. He knew at that time the names of scientists whose names he should never have known. Does that indicate that Dave Greenglass snooped around long before any supposed offer was ever being made? I want you to think [fol. 2199] about that. Certain things come out at a trial, little things, that are all revealing. Long before the Rosenbergs are supposed to have invited him into this conspiracy, Dave Greenglass already knew what only a man bent on illegal activity would know. And that is undisputed evidence. Undisputed evidence. And you may take that into consideration in determining whether Greenglass was not in cahoots, not only with Gold, because that testimony is as clear as crystal, but also the coincidence that Gold came out and met Dr. Fuchs the same day he met Greenglass.

You know, Greenglass is nobody's fool. Crafty, tricky. Did you hear the testimony? How he extracted information? Asked a question here, snooped around here? He not only tricked our country, but he put such a badge of dishonor upon him, not only because of that fact, but he brazenly told us how he got $5,000, from the Russians in 1950 and he kept it; he didn't feel any conscience qualms about stealing that money. And he even lied about that. Do you remember he said he got $1,000, from Rosenberg in May, 1950? And he said he got it because he had to pay off personal debts. And the personal debts to which he alluded were the debts that he had contracted from people who could ill afford losing money, and that was elucidated [fol. 2200] further by Ruth Greenglass's testimony.

What did he do with the $1,000? What did the Greenglasses do with the $1,000? They paid off some household debts, and $500, they stuck in the bank as a deposit that they were going to put on a bungalow. Very nice, honest people. Very nice, honest people. They were not square with anybody they dealt with according to their own story. Even if you believe everything they said, in terms of their own character, nobody. What makes you think that they were honest with you then? If you found a man in your business or in your personal dealings who was fair with nobody and was crooked with everybody, wouldn't you say to yourself, "Ah ha, I am going to be very careful in my dealings with this person because if he is crooked with everybody, the chances are he is going to be crooked with me."

I want you to think about that. I want you to discuss it in the jury room. I want you to exchange views about that.

As I said, Dave Greenglass is a key figure in this case. And then about that $4,000: the $4,000, they claim they got, and they said at that time they weren't worried, they weren't worried; they had made up their minds that they were going to cooperate with the Government. Both of [fol. 2201] them so testified. They made up their mind- in the latter part of May that they were going to cooperate with the Government.

All right, now let us see how a person acts: if a person feels that he is going to cooperate with the Government he does one of two things: he either goes down to a Government official and says, "Here, I know this, here is my story," or he waits until the Government comes and then when the Government agents come, he tells his story. I know of no third way that a person can act.

Now, let us see what the Greenglasses did. This is their testimony, nobody else's; their testimony; they don't go to the Government. That is conceded. So they waited for the Government to come to them.

Well, if they were going to cooperate with the Government and they were waiting, or I will even put it better for them, fighting for time, trying to save every day for them, and they were waiting for the Government agents to come, what do you think they would have done with the $4,000.?

[fol. 2202] Either they would have kept that $4,000. with that envelope, had it in their home and said to the Government agents, "Here, Rosenberg gave it to me. Here it is, he is the man. This is yours. This is illegal money. This is dirty spy money."

Did they do it? You know they didn't do it. You know what they did. They took this $4,000. and they put it in their chimney.

Now I want you to ask yourselves this question: From whom were they hiding that $4,000.? Were they hiding it from the FBI? Were they hiding those $4,000. from the FBI? And if they were, why? And then in order to insure that that $4,000. would stick with them, they take Mrs. Greenglass's brother and they slip him the $4,000., and he goes to his home and he puts that $4,000. in a hassock. He hid it. You heard my cross-examination. He hid it so that nobody could see it and nobody would know where it was located.

Tell me, is that the act of an honest person? Is that the act of a person who is going to cooperate with the FBI? Or is it the act of people who were preparing something, that would help them, who were plotting, who were building up a story? Now, let's see. Let's see what happened here.

If the Greenglasses were going to cooperate with the [fol. 2203] Government—and here I am going to rely upon your sophistication as New Yorkers—here I am going to rely on your experience, would they have taken $4,000. and given it to a lawyer unless they felt that they needed a protection over and above the protection that a Government witness needs?

You know, $4,000. isn't hay. $4,000. fees don't grow on bushes. You all know that. You all know that $4,000. is a big fee for anybody to pay to a lawyer. And people usually pay those fees when they feel that they are going to go to jail, or something terrible is going to happen to them; but here are people who are going to be Government witnesses.

Now, I want you to ask yourselves this question: Is it not reasonable to assume that when that $4,000. was given to Rogge's office, the Greenglasses were planning for them-

selves a story where they would mitigate and minimize their participation, and as Mrs. Greenglass blurted out here, they expected to tell the Government who the higher-up was, they were going to lead to a higher-up. Well, they were such little innocent people, dupes of somebody else. Why the secrecy about the $4,000.? Why, the payment to a lawyer of $4,000.?

Gentlemen, I want to consider the action of the Green-
[fol. 2204] glasses during this period. Never mind what they say. Consider their actions. How does that comport with the story that they want you to believe? Is it not reasonable to believe that the Greenglasses were trapped animals in May, 1950, that they were not going to cooperate with the Government or had not determined with finality that they were going to cooperate with the Government, but they were also trying to get out of the country. Isn't that the reason they took passport pictures? Do you believe that cock and bull story that Rosenberg told him to take passport pictures and he gave him five sets and they kept one set? They were trapped. They were getting money from some place. Of course they got $5,000. I don't know from whom they got it. They certainly did not get it from Rosenberg because if their story is true that they wanted to cooperate with the Government, they could have gone to the FBI and Rosenberg would have been nabbed right then and there; but the fact remains that when Dave Greenglass was taken in custody and locked up, after Dave Greenglass is alleged to have pointed the finger at Rosenberg, Rosenberg walked out of this building a free man. He was not arrested until a month later.

Well, if in this important case, if in this important case Dave Greenglass had said, "That's the man who made me
[fol. 2205] do it; he is the higher-up," don't you think that the FBI would have kept Rosenberg in custody? I don't know. Does the story sound credible to you?

The Court: Would you like to take a recess at this point?

Mr. E. H. Bloch: Would you mind?

The Court: We will take a five-minute recess.

(Short recess.)

Mr. E. H. Bloch: I just want to talk a little more about the Greenglasses.

Not only are these people self-confessed——

The Court: Just a moment. Sobell's counsel is not here.

Mr. E. H. Bloch: Oh, I beg your pardon.

The Court: Will the Marshall please get him.

(Mr. Phillips enters the courtroom.)

The Court: All right, proceed.

Mr. E. H. Bloch: Not only are the Greenglasses self-confessed spies but they were mercenary spies. They spied for money.

Didn't you get that from both their testimony? They love money. Did you remember that little incident where Greenglass was describing how Gold came in June 3, 1945, in the morning in his house—incidentally, Ruth Greenglass testified it was the afternoon, but I don't care. There is [fol. 2206] no doubt that that incident occurred and Gold put down an envelope containing money, and Gold said to Greenglass, "Is that enough?" and Greenglass, without even looking at the envelope, and without knowing how much money was in there, said, "It's enough."

And then on cross-examination when I asked him how he knew it was enough—you remember that, they were in $20. bills. When you go in the jury room take out twenty-five bills and put them in an envelope and see whether that feels thick or not.

He did not know whether they were $1. bills, $2., $5. or $10. bills.

And then the character of the man is revealed. I asked him this question, "How did it feel?" He said, "It felt good." "Good."

Now you know—I am sure that when the Greenglasses were on the stand and you looked at them, not only for the purpose of focusing your hearing upon them but you were sizing them up—haven't you gotten the impression that these people loved money, that they spied for money? They would do anything for money. They would murder people for money. They are trying to murder people for money.

You see, here is the Greenglass plot and here is where

they put it over the FBI, in my humble opinion. And don't [fol. 2206a] forget, Mr. Norton, Mr. Harrington and all the distinguished lawyers headed by Mr. Saypol sitting at this counsel table, even though they represent the United States of America, they are human beings. You know, there is nothing holy about them any more than there is anything holy about me. They are human beings and you can always impose upon another human being.

[fol. 2207] Now I will tell you what the plot of the Greenglasses was here. Two-fold. Greenglass figured that if he could put the finger on somebody, he would lessen his own punishment; and he had to put the finger on somebody who was here in the United States, and he had to put the finger on somebody who was a clay-pigeon; and that man sitting there (indicating defendant Julius Rosenberg) is a clay-pigeon, because he was fired from the Government service, because it was alleged that he was a member of the Communist Party; and he was a guy who was very open and expressed his views about the United States and the Soviet Union, which may have been all right when the Soviet Union and the United States were Allies, but today it is anathema; and you heard him testify, and he said it openly here, he didn't try to conceal it, "Yes, I thought that the Soviet did a lot for the underdog and they did a lot of reconstruction work" and he went on to recount one or two other things that he felt should be to their credit. Well, that is the kind of philosophy that was expounded in the New Deal days by Franklin Delano Roosevelt and by these gentlemen of the press, sitting here. But, boy, when you do that today, it is different; and in 1950 we had the same kind of climate that we have now. [fol. 2208] This man was a clay-pigeon.

And so Greenglass—and entre-nous, I submit that it wasn't Dave Greenglass; I think this part was hatched primarily by Mrs. Ruth Greenglass. I think you can ascertain people; I think she is the smarter of the two—and this is the perfect target (pointing to defendant Julius Rosenberg); this terrible spy, this big racketeer, who had a thousand dollars and $4000. to hand out, who educated students at universities with Russian money and was paid out untold sums of money.

What kind of a man was this? Is this a Costello? Is this your concept of a racketeer? Is this your concept of a pay-off man, a man who lived in a Knickerbocker Village apartment at $45. a month, and finally his rent was raised after many, many years, was raised to $51. a month, whose wife did scrubbing and cleaning and who had two kids, and they had a terrible struggle and they had to go and borrow money, and he scraped together $1000. in May, 1950 to buy stock in the Pitt Machine Company, and he had to give notes for $4500. for the balance of the purchase price; tell me, does that square with your idea of a pay-off man?

Please ask yourselves these questions, please do. It is important; it is vital. These are the things that are more eloquent than everything that came out of those mouths, [fol. 2209] because this is common sense. Common sense will tell you that this is not the kind of a man who did all of these things.

Now, look at that terrible spy (pointing to the defendant Ethel Rosenberg). Look at that terrible spy and compare her to Ruthie Greenglass, who came here all dolled up, arrogant, smart, cute, eager-beaver, like a phonograph record.

I want you to, when you go into the jury room—I am not going to take the time now—I want you to go to this record. It is available to you and I want you to read her testimony.

The Court: Wait a minute.

Mr. E. H. Bloch: I am sorry.

The Court: The record is only available to be read in the courtroom at the request of the jury. I do not send in the entire record.

Mr. E. H. Bloch: I am sorry, but if the jury desires it, may it have portions of the record read?

The Court: I will tell the jury in my charge that any portions they want to have read, they may request those portions be read.

Mr. E. H. Bloch: Then, may I say to you, ladies and gentlemen, I want to now fasten attention to a certain incident. Your recollection of the record governs, not [fol. 2210] mine, but I want you to, if you feel that this is important in determining whether or not any witness told the truth, to get the record. That is the thing. This

printed record has a better recollection of any of us. Compare Ruthie Greenglass' testimony of the conversation she is alleged to have had with her husband on November 29 and November 30, 1944, in Albuquerque, with her relation of that conversation on cross-examination and you will find that repeated, almost word for word, if not word for word, the whole business; and she wants you to believe that she didn't rehearse this story with Dave and Dave Greenglass didn't rehearse this story with her. Cute, cute. Maybe some of you are more acute in sizing up women than others, but if Ruth Greenglass is not the embodiment of evil, I would like to know what person is?

[fol. 2211] Is Ruth Greenglass the kind of person that can be trusted? Let me tell you something, she is so acute that she wriggled out of this. That is how smart she is. She wriggled out of it. She squirmed through that needle's eye. Well, if she can fool the FBI, I do hope that she won't be able to fool you.

Now just one last parting shot at this great hero, this great hero of America today, Dave Greenglass. Do you think he was inspired by patriotic motives? Sure, you can forgive a person if a person does wrong and has remorse, comes in out of a sense of loyalty to his country, patriotism, in a crime of this kind, and puts the finger on people. But he was so remorseful, as he said almost right from the beginning, and as Ruth Greenglass said right from the beginning, they were so repentant, so contrite, that they didn't want this, and Ruth Greenglass said to David at one time, "Oh, for God's sake, don't show him the atom bomb. That is terrible. We can't take the responsibility." That is when Dave Greenglass came back on the second furlough in September, 1945, and before they saw the Rosenbergs.

And yet after that, let us see how patriotic, let us see what sense of conscience they had: They claim they got $200. from Rosenberg. That terrible remorse, and then here is something quite significant: Ruth Greenglass testi-

[fol. 2212] fied that Dave Greenglass got $800. from Rosenberg in 1947 or 1948, I forget just which. He didn't tell you anything about it. Why? Why didn't he say that he got $800. from somebody in 1948? Do you think he

forgot it? Do you think that this rehearsed, coached witness forgot? No.

You see what he was trying to do was to impress you, and eventually the Court that he was just a little bit of a guy, just a little bit of a guy. And then they were so repentant, they were so remorseful, that they got $5,000. in 1950 which they knew was illegal money and which they appropriated to their own use.

If you want to fall for that story, ladies and gentlemen, you can do it, but I tell you it is a cock and bull story.

Now, I would like to leave this thought in your mind with respect to Ethel Rosenberg, because my father has told me during recess that he feels that I am covering the testimony relating to Ethel Rosenberg sufficiently, at least to his satisfaction, that he won't have to sum up to you, and I am covering both Rosenbergs in my summation.

Did you ever see anything quite so sad, and quite so tragic as her testimony, Ethel Rosenberg's testimony, when she went to Ruthie Greenglass in June, 1950, and pleaded [with 2213] with Ruthie to open up and tell her what was wrong with her kid brother, David. Brought up in the same house; her baby brother. She loved him. And let me say right now, this is not by way of any sympathy. Nobody is looking for sympathy here. I just want you to analyze this coldly, coldly. She wanted her help. She wanted her help; whether her brother did anything wrong or right, she wanted to help him. That is human. Can we condemn every member of a family who wants to stick to another member of the family? What is so terrible? Wouldn't you do it, and wouldn't I do it? And here is a man who had had a fight with Davey to get his stock. And when Davey came around and said he was in trouble, like a schnook—that is a Jewish wor*k*; it means this—I am trying to get the exact translation—well, a very easy-going fool. He goes to his doctor to try to get a false certificate for Davey.

The Court: Is the word stooge what you are looking for?

Mr. E. H. Bloch: Stooge? Stooge.

Now, why did Davey pick on him? Nobody, unwittingly, it is true, but nobody is giving Julius Rosenberg that badge of character that Dave Greenglass did. Because

Rosenberg was a steady, hard-working man. He had a [fol. 2214] little business, trying to make a go of it. He had to struggle with two kids. Davey knew that Rosenberg could be trusted, and Rosenberg wouldn't have to squeal on Davey.

And even out of his own testimony on that exact point I believe we can draw a fair inference that even if he knew that Davey was guilty of the most terrible crime, he would never have squealed on him. That is a terrible thing, isn't it? That is an awful thing. I don't know. You will have to decide in your own conscience whether you think that kind of a man deserves the condemnation to be convicted as a conspirator to commit espionage.

Now, ladies and gentlemen, I say finally before I leave the Greenglasses, that this case hinges on their testimony. If you don't believe the Greenglasses or if you have a reasonable doubt as to whether or not they are telling the truth, I say you should unhesitatingly acquit these defendants, and I want now to review just for a few moments something which is very, very strong in this case: there have been a number of characters dragged in. There is a man by the name of Harry Gold who got on that stand, a self-confessed spy who has been sentenced to thirty years in prison, a very bright man, an intelligent man, a nervous man; remember that; a pathetic figure. But you [fol. 2215] know, hope is abandoned with him. He got his 30-year bit and he told the truth. That is why I didn't cross-examine him. I didn't ask him one question because there is no doubt in my mind that he impressed you as well as impressed everybody that he was telling the absolute truth, the absolute truth. And what did he say? What did he say?

He said that he was in cahoots with a Russian, John; and that he was sent by John out to Albuquerque to see Dr. Fuchs and to see Dave Greenglass. He saw Dr. Fuchs and he saw Dave Greenglass, and he gave Greenglass $500. and he got information from Dave Greenglass.

Now, Gold I think we can infer was a pretty important guy in this conspiracy? Did Gold tell you that he ever met Rosenberg? Did Gold tell you that he ever spoke to Rosenberg? Did Gold tell you that he ever had any traffic

or transactions with Rosenberg? He did not. He did not because he did not. Strange, isn't it? Gold, one of the top conspirators, never saw Rosenberg, never met him, never had any transactions with him.

Now this is the story about the Jello. Get that straight, get that straight. A big dramatic showing was made here—cut in two. Did Greenglass have half of that Jello box? [fol. 2216] No question about that. And when Gold got out to Albuquerque, did he have half of that Jello box? No question about that. Gold said he got his half from Yakovlev. Greenglass said he got his half from Rosenberg. But if Gold didn't know Rosenberg, and incidentally there is no proof that Rosenberg ever knew Yakovlev; on the contrary, Rosenberg swore that he never saw him and the Government never attempted to prove to the contrary. Is it too unreasonable to infer that maybe Dave Greenglass got his one-half of the Jello box from the very man who gave the other half to Gold?

Yakovlev left this country in 1946. Maybe Dave Greenglass figured, "How am I going to point the finger at this man? He is out of the country. That isn't going to do me any good. I have to have somebody whom the Government can nab."

Then Bentley testified, Miss Bentley. You know, there are ministers of the cloth who are deeply religious men, and then there are people who have intruded themselves in the religious field because it is a good thing; they are professional religionists; they make a little money on it. Bentley is a professional anti-Communist. She makes money on it. I am sure the Government doesn't pay her any money. She writes books, she lectures. This is her [fol. 2217] business; her business is testifying.

Now, what did she say? Let us hear what this great authority said, this intellectual moll, this Puritan little girl from New England. Did she ever meet Rosenberg? She was a top gal. She gave orders, she says, to Earl Browder.

Now you and I have read the newspapers that Earl Browder was the head of the Communist Party a number of years back. She gave orders to Earl Browder and she said that Golos, her sweetheart, was the control commis-

sion of the Communist Party and that she was engaged in espionage work, that she had thirty people with whom she worked ferreting out information from the Government. [fol. 2218] Did she mention Rosenberg as one of those 30 people? No.

Now, you know, Yakovlev, Bentley, the top people, they never saw this man. She claims——

Now Bentley, yes, I am sorry, she testified, she had a conversation in 1942 two years before this indictment is alleged to have started, with a man whose voice she couldn't identify.

Listen to that—with a man whose voice she couldn't identify. And this evidence is introduced for the purpose of connecting Rosenberg with Bentley or Golos.

Now I want to tell you this, this is an American court of law, and if you are going to take that kind of evidence against anybody, then—I don't know, I guess we ought to abandon our American system of justice. Imagine, she doesn't know whose voice, and she says yes, she remembers, the man said, "This is Julius."

Now listen to this, "This is Julius"—Julius Rosenberg? Now was it a code name or was it a true name?

Bentley testified she used all kinds of names.

Gold testified that he used all kinds of names. He came into Greenglasses and he says "This is Dave of Pitts-[fol. 2219] burgh."

They weren't revealing their true identity, these true conspirators. All of a sudden they want you to infer that Julius was his true name and not a code name.

Is it reasonable to infer that if any such conversation ever did take place that Julius was a code name?

Now you know, this doesn't ring true. If this man is the higher up, if this man did receive a citation from the Russian Government for being a good boy—listen to this—a citation from the Russian Government. Now, for God's sake, you are intelligent people. Do you believe, or have you ever heard that a Government cites somebody without making public the citation? And do you believe that this little guy (indicating), with a little business, this terribly wealthy man who hasn't got a dime to his name, that he was cited by the Russian Government? If you believe that,

for God's sake, convict the Rosenbergs and let's get an end to this case; but if you don't believe it, then take a lot of the other things that these Greenglasses said in their anxiety to bury the Rosenbergs.

A citation from the Russian Government. Yes, [fol. 2220] watches——

Let's see those watches, will you? Let's see the terrible watches.

(Watches handed by Mr. Harrington to Mr. Bloch.)

Mr. Saypol: They are not in evidence.

Mr. E. H. Bloch: They are not in evidence. Do you object if I refer to them? I will concede that you may refer to them.

Look at these watches——

The Court: They are not in evidence, you know.

Mr. E. H. Bloch: All right, if the Court does not want me to comment on them——

The Court: You can comment on them any way you please.

Mr. E. H. Bloch: All right, I am not supposed to show you the watches but I think as the watches were passed you got a look at them. This is the man that is supposed to have gotten watches from the Russian Government. Did Rosenberg have to tell you that he had a watch and he lost a watch and he made a complaint to the New York Central Railroad Company? That is supposed to be the watch, I suppose, that the Russians gave him.

Do you believe that? Then you can believe anything. [fol. 2221] Now, let us get to the console table because that may be disturbing you.

What exhibit is that console table, please?

Mr. Harrington: 27.

The Court: You have got about 25 minutes to go.

Mr. E. H. Bloch: Thank you very much.

The Clerk: 28.

Mr. E. H. Bloch: Yes.

Here is a representation of some console tables. Now, these are not the console tables that came from Rosenberg's house that were supposed to be there. These are samples, and "Do they look like them" and so forth.

Now, there was a very sweet woman who was put on redirect here, Mrs. Evelyn Cox. There is no doubt in my mind that Mrs. Evelyn Cox wanted to tell the truth, the whole truth and nothing but the truth. I don't think that woman would lie for anybody. Yet, in examining her, she testified that the console table was like this one (indicating), in 2 here (indicating). Take that into the jury room and examine it closely.

You notice how this console table opens up.

Do you remember her testimony?

Now I want to read you something. I want to read you something, and you may have forgotten about it. I want to read you Ruth Greenglass' testimony, page 1014 of the [fol. 2222] record, when Ruthie was saying—she came in, she admired the console table, "Wonderful"—"Where did you get it?"

She said, "Julius, where did you get it" and he says—and she said in response to this question:

"And what did he show you when he turned the table on its side?"——

referring to the console table that he is supposed to have gotten from the Russian Government——

"A. There was a portion of the table that was hollowed out for a lamp to fit underneath it so that the table could be used for photograph purposes, and he said when he used the table he darkened the room so that there would be no other light and he wouldn't be obvious to anyone looking in."

[fol. 2223] "Hollowed out for a lamp." Now, Mrs. Cox did work for the Rosenbergs. She cleaned their home, amongst others. Don't you think, don't you think that if this console table was as described by Ruth Greenglass Mrs. Cox, who probably cleaned that house God knows how many times—she said two or three times a week for maybe a year or two—don't you think it would have caught her eye that there was a hollow out there for a purpose? Did you hear Mrs. Cox testify to anything of the kind? She did not. Personally—no, I am not going to say that; I am going to take that back, because my personal opinion doesn't count; I want to keep that out—but I want you to ask yourselves whether or not Mrs. Cox may not be

mistaken as to the particular kind of a console table, and I want you to take this illustration, number two in, and determine for yourselves whether or not the description of the console table that the Rosenbergs had, which they swore that they got from Macy's, was not this kind of a console table.

Now, the testimony is quite confusing, ladies and gentlemen. I tried to follow it, and I am sure you tried to follow it, but certainly, I say, that we made every attempt here to try to verify the story of the Rosenbergs that they bought that console table from Macy's; and we subpoenaed Macy's, and at first Mr. Kelly who represented Macy's, [fol. 2224] stated that their records for 1944 were destroyed, but in 1945 the United Parcel Service did their deliveries.

Now, this table was alleged to have been bought in 1944 or 1945. All right, that gives a hope that maybe if we subpoenaed the United Parcel Service for the deliveries from Macy's in 1945, we might be able to find this record of this terrible table, this $21. table; and then Mr. Kelly, a very sincere person, called Mr. Saypol and called me that night and said that he had made a further investigation and he ascertained that in 1945 Macy's also made their own services, and the records for both 1944 and 1945 are not available.

But I want to tell you that we made our best efforts to substantiate that story, and unfortunately, the records are not here. But in the state of the record, I say, I say to you, that Mrs. Cox's testimony, if anything, corroborates the Rosenbergs' testimony as to what kind of a console table that is, because if it were any other kind of a console table, as described by Ruth Greenglass, Mrs. Cox would have been the first one to tell you it had a hollow out for photographic purposes.

Now then, I want to call your attention to just one thing here before I finally put these lying Greenglasses out of my mind in my summation. I introduced in evidence, on [fol. 2225] behalf of the defense, a picture of Harry Gold. And this is the late City Edition of the Herald Tribune of May 24, 1950, (exhibiting to jury). Do you remember that the Greenglasses testified that Rosenberg came over

to their house one morning, around this time, with this edition, or with one of the editions, at any rate, of the Herald Tribune, and he said to them that Gold had confessed and to look at his picture; and the Greenglasses said, "We can't identify the picture; we don't know who that man is."

Rosenberg said: "Why, that is the man to whom you gave those secrets in '45; that is the man who gave you the $500."

Now, I want you to compare this picture with Government's Exhibit 5. You did that, I know, in the jurybox before, but I want you to take that in again and I want you to ask yourselves whether or not the Greenglasses were lying or telling the truth when they related this incident. Because the Greenglasses saw Gold; and you remember, I was very careful in asking them what kind of weather it was; was it sunny; was it clear? "Yes, the sun was shining." They were with Gold in the morning, in the house; he must have had his hat off. They took a walk with him in the afternoon. Do you mean to say that a person like Gold, with those gleaming eyes, with that dis- [fol. 2226] tinctive face, with those features, would not be distinguishable and recognizable to a person who had traffic with him? That puts the lie to the Greenglasses' story as firmly as anything that can be shown to you.

It is these little things that count, ladies and gentlemen, when witnesses are on the stand. You know, when a rehearsed witness is on the stand, you can ask him all kinds of questions; she has got prepared answers; you have got to go around him; you have got to cut into him obliquely; you have got to show what kind of a person he is; but once in a while something slips, and in their zeal to bury the Rosenbergs, they slipped; they slipped.

They also slipped on that first January, 1945, visit. I will show you what a fake it is; show you what a fake it is. Two days after Greenglass came back from his furlough, Rosenberg came around the house and said, "Give me information," and he gave it to him; and he said "Write it down," and the next day he came back again. Rosenberg was working for the United States Government at the time, and the proof is undisputed that he had to be at work at

9 o'clock. The Greenglasses didn't describe the time; they said he came in the morning. Now, if Rosenberg came around to the Greenglasses' house to get information in the morning of the first week of January, 1945, then the Government could have produced his Government records [fol. 2227] to show that he was late or he was absent, and they didn't. These are the kind of things I want you to discuss, gentlemen and ladies, when you get into the jury-room.

Now I want to come to Elitcher. Elitcher is a pathetic character. He is really a nice man; Elitcher is a nice, intelligent man.

The Court: You have fifteen minutes, Mr. Bloch.

Mr. Bloch: Fifteen minutes, thank you.

(Continuing) But Elitcher had a Damoclean sword hanging over his head. Elitcher knew that he had made an oath to the Government at the time he entered Government service. He knew that he swore he was not a member of the Communist Party. He knew that he had violated the oath. He knew that he could have been prosecuted for perjury.

Now, you know the FBI doesn't have to come around to you like some of these bullies in some of our police precincts and swat you with blackjacks; they don't operate that way. These men are gentlemen; these men are gentlemen. But when a witness knows that he is in a box, any kind of a suggestion, any kind of an innuendo from a Government agent under those circumstances would necessarily gravitate a man's thinking to fall in line with what the Government would like him to say; and there is no [fol. 2228] doubt in my mind that at the time Elitcher came down in August or late July, 1950, the FBI honestly believed that Rosenberg was guilty of this crime, and Rosenberg was suggested; and listen to Elitcher's testimony; this is the thing I don't understand about it. He first gave you the impression that he came down here and he was here for three or three and a half hours, and that was the end of it. Then upon closer interrogation, it developed that after that he went out to his home with the Government agents and they were there until midnight. Why that?

Now, is there any dispute that Rosenberg came down to see Elitcher twice? None. There might be a dispute about date. Elitcher says, "June, 1944." Rosenberg says, "The first visit was in June." He is not sure. It may have been the summer; it may have been the spring, but it was the time when he was assigned by the Government to the Bureau of Standards for a couple of days to work in Washington, D. C.

Elitcher says that the second visit was in September '45. Well, I want to tell you, some of these people have remarkable memories. I am going to ask you whether you remember whether a certain man came to your house five or six years ago and you would be able to even give me the month, but at any rate, Rosenberg says he doesn't remem- [fol. 2229] ber the month, but he remembers and refreshed his recollection from one of the papers in his union file that he went down there after he had been discharged and he was fighting his case, and he was advised to go see his Congressman; and he went down there; he went down to see some representative of the Federal Workers Union. But it is unimportant; it is unimportant whether it is April or some other month. It is not important. There is no dispute about the fact that Rosenberg was down there twice. There is no dispute about the fact that Elitcher came up to the Rosenbergs and were entertained by them socially; there is no dispute about that.

But I say that there is a very serious dispute as to what Rosenberg said to Elitcher. Do you believe, do you believe, that a man who hasn't seen a classmate of his for six years, will walk into his house and before he is even there an hour he will say to the man, "Get your wife out of the room," and then right there and then make an offer to him to commit espionage? Do you want to believe that kind of a story? Does that sound credible to you? If Sobell was Elitcher's friend, and if Sobell is in cahoots with Rosenberg, then don't you think the logical person to have made the overture would have been Sobell, not an almost complete stranger? Rosenberg had seen him for a fleeting moment at a swimming pool in 1940, but to all [fol. 2230] intents and purposes, Elitcher and Rosenberg was not friends; they were classmates, who casually saw

each other. Do you believe a man is going to come in and make that kind of an overture? There is no doubt in my mind that they discussed politics, and there is no doubt in my mind that Rosenberg said at that time, as he said to you quite honestly, what he thought of the Soviet Union and whether or not there was a second front. Of course people talked about those things. It is a far cry, however, from making an overture to commit espionage.

Take this fact into consideration, take this fact into consideration: If Elitcher had given information, then there would be some point in his testimony. But here is a man who claims he was wooed for four years and saw Rosenberg and Sobell at different times and didn't give them one solitary piece of information.

[fol. 2231] What were they wooing him about? What is this cock and bull story in June 1948 that he met Rosenberg and Rosenberg said, "You stay where you are; don't you leave your Government job"? Well, you may say that to a fellow who is spying with you and from whom you are getting information, but don't say that to a man who you have been trying to woo for four years and who has told you that he doesn't want to have any thing to do with you.

Then Elitcher slipped, also—you see, they all slip, they all slip when they lie exaggerate—he said that he came here one time, purposely, purposely to discuss espionage with Rosenberg; and on his direct examination he said that he came here on official business, I believe, and I began to question him and tried to pin him down. Did his wife come with him? Did he go on official business? Did he sign a travel voucher? He squirmed and he squirmed and he squirmed and he finally said he couldn't recall. Well, on that kind of equivocal testimony, gentlemen and ladies, I tell you, you don't even give a man's money away, much less his life.

Then we come to the Hollywood finisher; then we come to the vulgar and tawdry part of this trial, this phony Hollywood finisher.

[fol. 2232] A man by the name of Schneider got on that stand yesterday, and you heard him testify. His testimony was supposed to convince you that the Rosenbergs at-

tempted to flee this country or had such ideas in their mind.

The man was not on the list of Government witnesses, and the Government contends that only yesterday, at 11:30 in the mor-ing, the last split-second, low and behold, this witness appears.

Now, ask yourself this question: If it is true, as Greenglass testified, that he took passport pictures at Rosenberg's request, and that Rosenberg said to him, "Don't you worry about how I am going to get out; I am traveling a different way, but I will meet you in another country"—I think it was Mexico—don't you think that the FBI, in this important case, would have combed every photography shop in New York to get a negative, in order to ascertain whether or not Rosenberg was taking passport photos? This was in June 1950, when Greenglass was supposed to have told his story, and it is now what? It is now the latter part of March, 1951.

Let's see what this photographer testified to; let's analyze his testimony. Remember at the beginning of my summation I went through all the documents? A negative? A negative? Something you could see, something you could see and say, "That is it"? Oh, no, no negative. [fol. 2233] A bill? Something you could see? Oh, no; didn't have it. And then he said something that opened everybody's eyes, or it should have opened yours—and I am assuming that you people would have had some experience with photographers, like everybody else; once in a while you go to a photographer and have a snapshot, or go with your children and have snapshots; and I am going to ask you to determine this from your own experience—when you go to get a photo for passport purposes, do you pose in a group? Do you pose in a group or do you pose just with your head, to get this part of you (indicating)?

The more the photographer testified, the more he talked, the more we found out about this. Yes, Ethel took a picture with her two children. One was sitting on her lap and one was standing alongside of her. Is that a passport photo? He took some of them sitting; he took some of

them standing. Is that compatible or is that congruent with going to a place to take passport photos?

Did you hear him describe his place? There was introduced in evidence the inside, but I asked him about the outside, because when that cross-examination of Mr. Saypol's came Rosenberg, about 99 Park Row, somebody had to make an investigation of that shop on behalf of the [fol. 2234] defense, and what did the outside of that shop show? It is a plain, ordinary photography shop; no big signs about passport photos. They have pictures of brides and grooms and family groups and buildings; and they had a sign where "Passport photos" was only one of the various items that they serviced or sold in that place, and they also serviced family groups, and Rosenberg told you very frankly and Ethel Rosenberg told you very frankly—and you saw a bunch of pictures here; you know they are not in evidence, but you saw them—of course they took photos with their kids. Haven't you? Haven't you? What is wrong with that? What kind of insinuation? What kind of suspicion? Everything that Rosenberg did is supposed to be torn and slanted.

Now, look, ladies and gentlemen, you saw Julius Rosenberg and Ethel Rosenberg on this stand. You judge them. You saw them. You had an opportunity to study them. I want you to compare them and the type of people they are with the Greenglasses. I want you to ask yourselves, "Are these the type of people who are spies? Are these the type of people who will lie? Does their past life indicate that they are the type of people who will lie"?

I say to you that this case started out to be a big, big case. [fol. 2235] It was going to last months, and it petered out in three weeks; I want you, if you decide—the file is open to you—if you want to read that part of the record where the list of witnesses were read to you, I want you to look and see who was on the list of the witnesses, if you forgot, and I want you to ask yourselves, "How is it that Ann Sidorovich, who is a Government witness on that list, was never called to corroborate that Jello night? How is that? How is it that this peculiar injection of an Al Saurent, in Ithaca, how it is that his wife, whose address is listed at Ithica, was never called?"

And this peculiar method of trying to poison you. To Rosenberg, "Don't you know that Saurent is in Mexico?"

Who knows that Saurent is in Mexico? Is there any evidence that he is in Mexico? So far as anybody knows, he is in Ithaca; he may be in any place in the world. His last known address is Ithaca. Is there any proof that he is in Mexico? But "Mexico" was inserted in your mind to poison you, you see, because Sobell was down in Mexico. [fol. 2236] And then in connection with Sobell, I want to ask you this and relate this to the Greenglass testimony. If Greenglass was telling the truth about the signals with a book, and a finger in the book down before a statue in Mexico City, and then go over to Sweden—do you remember that?—how is it that Sobell, who is supposed to be conferring with Rosenberg, how is it when he went to Mexico, if he were trying to get out of Mexico because of this crime, how is it he did not know about the three fingers and the statue? Does that make sense to you?

Now, I want to conclude very simply. I told you at the beginning and I tell you now that we don't come to you in this kind of charge looking for sympathy. Believe me, ladies and gentlemen, there is plenty of room here for a lawyer to try to harp on your emotions, especially so far as Ethel Rosenberg is concerned: a mother, she has two children, her husband is under arrest.

No, because if these people are guilty of that crime they deserve no sympathy.

No, we want you to decide this case with your minds, not with your hearts, with your minds, because we know that if you will decide it that way, if you will decide this case the way you would decide an ordinary problem that [fol. 2237] comes up in your life, we will be satisfied. We will be satisfied that you either will come to the conclusion that these defendants are completely innocent, or at the very, very least that you would have a reasonable doubt about their guilt.

Now when I say a reasonable doubt, I don't mean a doubt based upon caprice or a doubt based upon a whim. I mean a doubt based upon your reasoning processes or the use of your reasoning processes.

The Court: Your time is up, Mr. Bloch.

Mr. E. H. Bloch: I am winding up now, your Honor.

I have just this last sentence or a few words to say. You have heard the charge. You know the consequences of a verdict of guilty. Punishment is not yours if you find the defendants guilty; it is for the Court, but long before the Court gets this case, the most important, the vital part of the case resides in your power.

Put yourself, if you can, in that defendant's box and ask yourselves, "If my brother or my sister, or if I were sitting in this box, or my child were sitting in that defendant's box, would I convict them on this kind of testimony?"

And lastly, and lastly may I urge you to be [fol. 2238] guided by nobody in this wide world except your own judgments and your own consciences. What I say doesn't matter this much (snapping fingers). What Mr. Saypol says doesn't matter this much (snapping fingers), and with all due deference to the Court, what the Court says on the facts doesn't matter this much, because the factual question is yours and yours alone to decide. This is your job. Nobody in the wide world can take that job away from you and nobody can take that responsibility away from you. It is yours.

And the fate of these defendants is in your hands. And I am hopeful, I am hopeful with this climate, with this hullabaloo about this case, I have got enough confidence in twelve American jurors to believe that they will exercise their individual responsibilities, collectively and separately, that they will bring in an honest verdict.

I don't care, ladies and gentlemen, I don't care whether or not you disagree or whether you all agree at one time or another, one thing alone I ask you, I am entitled to ask that of you under the law, I am entitled to ask—these defendants are entitled to ask that of you as human beings: Please take the evidence and sift it, analyze it, take what I said, take what Mr. Saypol is going to tell you, take what Mr. Kuntz is going to tell you when he sums up for Sobell—[fol. 2238a] take these things, weigh them, weigh them carefully, because in your hands human lives are at stake.

That's all I ask you to do, and I say that if you do that, you can come to no other conclusion than that these de-

fendants are innocent and you are going to show to the world that in America a man can get a fair trial.

The Court: Mr. Kuntz.

[fol. 2239] SUMMATION BY MR. KUNTZ

Mr. Kuntz: May I have the indictment? May I have Government's Exhibit 25?

(Indictment and exhibit handed to Mr. Kuntz.)

Mr. Kuntz: Ladies and gentlemen, I am going to try to be brief. I don't think our part of the case requires the exhaustive examination on behalf of Sobell as in regard to the other two defendants.

We represent Sobell and nobody else. You and I met here three weeks ago yesterday, and I remember Mr. Phillips getting up in front of you, saying, "We don't know what this is all about. We will sit here with you and find out."

Let me show you what I mean. I wanted the other two indictments. The Court has ruled we shouldn't have them. But this one is the one we are charged with (indicating).

Now I want to read you a little bit of this indictment and I want you to read it carefully inside:

On or about June 6, 1944 up to and including June 16, 1950 at the Southern District of New York and elsewhere Julius Rosenberg, Ethel Rosenberg, Anatoli Yakovlev, also known as John, David Greenglass and Morton Sobell did conspire to commit espionage. The rest I am going to abbreviate that way. And then we come to the second page [fol. 2240] and it says here overt acts.

Now, I presume that even a non-lawyer knows what an overt act is, and we find listed in alphabetical order from one to twelve a lot of acts that were supposed to be done in furtherance of this conspiracy, and I defy Mr. Saypol and I defy you to find anywhere outside of what I read to you the name of Morton Sobell.

Now do you see why Mr. Phillips said we don't know what it is about, because in there they don't tell us much about it. We have struggled to find out what it is about prior to coming here, but Mr. Phillips is right when he

said at the start, "We will sit here and listen with you to find out what it is about," and I said, "Harold, don't worry, let us sit down and sit back. We will find out sometime."

And then I observed the most amazing, the most amazing experience of my court life, which as you can see by these hairs is not a short one, and I have been a trial man for over thirty years, and I tell you that I saw the most amazing experience in my court life in this case. I saw my good friend Mr. Harrington and Mr. Norton and Mr. Branigan and Mr. Lane and Mr. Cohn and Mr. Kilsheimer and Mr. Saypol, all of them, like the mountain, they labored and labored and labored, and they brought forth a mouse—Elitcher. When I say a mouse, Elitcher. Will you tell [fol. 2241] me, if you take Elitcher's testimony out of this case, is there any conspiracy against us? Did anybody else say a word about that part of the conspiracy? Oh, I will come to Mexico. But if you take Elitcher out of this case, are we part of the conspiracy?

I am not going to be charitable like Manny Bloch. I have tried cases a little longer than he has. I am through being charitable when the life of a man depends on my actions and my words. I didn't sleep throughout this trial because the life of a man depends on what I do, and let me tell you right now, that whatever conduct took place in this court about witnesses or anything that was said before you, that is on the shoulders of Mr. Phillips and myself; don't put it on anybody else's shoulders. But I am not going to be as charitable as Manny Bloch with this Elitcher.

Why should I be charitable? When I cross-examined him, I asked him, "Elitcher, aren't you a liar?" and he said, "Yes."

"Aren't you a perjurer?" He said, "Yes."

How could I be charitable with a liar and perjurer? Why? Do you and I make it a habit of excusing liars and perjurers? You know, and you probably have met them in your experience, we have people who are psychotic liars, [fol. 2242] we call them. You feel sorry for them. You think they ought to have treatment, and by the way, if I remember right, it is three weeks ago, but if I remember right, Elitcher had been getting treatment for a couple of years, but let that go; that is not the thing I am driving at.

Elitcher was not a psychotic liar; he was a miserable liar, a man who will involve, who will kill another man to save his own miserable skin.

The Court: Let me say right here, ladies and gentlemen, there is not to be before you and you are not to consider what punishment this Court might mete out in the event that you bring back a verdict of guilty. I have told you that time and time again. I haven't interrupted either of the counsel up to this point when they have talked about lies or murder or "will kill." I want you to disregard that completely, because what this Court will do at this very moment is even unknown to this Court. Proceed.

Mr. Kuntz: All I know is what I read in the statute, and that, I presume, is something that I can comment on, and the statute says for this crime that Mr. Elitcher is trying to prove Mr. Sobell guilty of, he can get up to thirty years or death. That is what the statute says.

[fol. 2243] And as a lawyer I read the statute and as a human being I worry. I am not saying what Judge Kaufman is going to give anybody here if they are found guilty. I am not saying a word. I think the statute governs all of us including Judge Kaufman. I tell you I was worried. I didn't sleep all last night. I felt that within my limitation—I am only a human being, but within my limitation I might not get the inspiration to get across to you the way I feel about this case, but since this is my last chance to talk to you, if I don't succeed in getting across to you the way I feel that this case looks like, I fail. And that is why I didn't come into the courtroom this morning. I asked Judge Kaufman if I could stay out and study the record a little more.

And suddenly something occurred to me. All I had to study was Elitcher's testimony. Something occurred to me and maybe I put my finger on it. Maybe. I don't know. But I looked through these typewritten minutes and picked out wherever Sobell's name was mentioned, and I came across the first mention at page 315 and 316.

What was that incident? That was the incident of June, 1944, when Rosenberg was supposed to have gone to visit Elitcher to enlist him in espionage, and if you [fol. 2244] look through all that testimony as I did, you

will find one remark that Rosenberg is supposed to have made, one remark only: Sobell is also involved.

Now, that is a pretty crucial incident, isn't it, to get a man involved in espionage. If I were a conspirator, that would be the thing I would concentrate on first, getting a man in. And throughout that testimony the only words were, "Sobell is also in."

Now, let me tell you why I said I had my finger on it: just take out that line and there is no conspiracy on the part of Sobell. Take that out of there and there is no conspiracy. I am talking about up to that time.

Well, is it so hard, is it so hard for a liar and a perjurer to sit there? Is that so difficult? In your experience, have you found it so difficult for a liar and a perjurer to do that, and I am calling this fellow here, this mouse that was begotten by the lion, I am telling you that he is a liar and a perjurer. I don't take it back because he said so himself. And don't you let him take it back. Don't you let him protect his measley skin.

You heard me ask him on the witness stand, "Elitcher, you are scared to death right now, aren't you? And you have been scared to death all along?"

[fol. 2245] What morals? You remember Senator Tobey said so. What morals have we come to when we will endanger a man's life to protect our own measley little skins? Where are our morals? I refuse to believe that we are like that. I am not.

Just remove those two words "Sobell was also."

I even looked in that record, the sentence wasn't even completed.

I heard Manny Bloch say here to you, after I did comment, something that I was going to comment. If this is really true, Sobell has lived with the man.

Do you remember that testimony? Sobell lived with Elitcher in Washington. They had been friends for a long time. They saw each other. Their houses are back to back in Flushing. Rosenberg did not meet him for six years. All of a sudden he comes in and says, "Come on, help us to commit espionage," even though it might mean a death sentence.

Does that make sense? And if it were true, Sobell—

if it were true, and maybe conceivably it could be Rosenberg but he wouldn't come in the way this testimony shows. He would come in and say, "Look, you remember me, I am Rosenberg from City College."

"Oh, yes, I remember you."

[fol. 2246] "I come here because I was sent by Sobell, your very good friend."

That would be the kind of conversation there would be.

No, Rosenberg enlists him for espionage and mentions casually that Sobell is also—and, by the way, that is about where the sentence stops in the record.

Then I continued on—don't you remember I cross examined him? I said, "Did you get in touch with Sobell in any way to verify it?"

After all, here is a man, Rosenberg, comes in to you and tries to get you to commit espionage.

"Did he check with Sobell?" "No."

"Did you call him up? Did you write to him?" "No."

In September, three months later, they went on a vacation together anyhow. Sobell and his wife and Elitcher and his wife. And they were away for a week, and he said, "I mentioned it to Sobell," and he said, "Sobell became angry"—do your remember that?

Now if he had left it right there, if you had heard that testimony, "Sobell became angry," you would say to yourself right away, "Sobell is not part of a conspiracy."

[fol. 2247] No: the same as a few words were put in in June, a few words were put in on the vacation.

Now mind you, Sobell is supposed to be conspirator, and all the conversation for a full week that Elitcher gave you was, "Sobell became angry," and added the words "Julie," or "Rosenberg shouldn't have mentioned my name."

Now just figure that out.

Take that part out, take that part out and you still have no conspiracy.

Now that was the inspiration—not the inspiration, let us not call things by the wrong name. That is the only thing that I could put my finger on, to see, to try to analyze this man Elitcher, and I find that every spot—and I am not going to go over every one. In every spot—take out

a couple of words and you will see that Sobell was not a conspirator.

Again on page 358 I find this—now this I am going to be kind and charitable to Mr. Elitcher, and I am going to point my finger at this man (indicating Mr. Saypol), because that is all he is in this case, just like me; just as this man (indicating), as that man (indicating), that man is that man (indicating). He happens to be a lawyer with a Government job now, and that is all to me.

[fol. 2248] And when I see what is going on with some of our Government officials, please excuse me if I don't put a halo around him or anybody else, please excuse me; I have been living in this country too long to see what is going on.

Now, let us see what I mean, and I point the finger at Saypol.

There was testimony that Sobell had worked for General Electric for several years. After General Electric he came down to an important job at Reeves—always a Government worker.

And listen to this question, listen to it and tell me if this is poison or it isn't poison, if a man's life hangs on this or it doesn't. Just listen. This is a question asked of Elitcher: "Well, in the course of his duties"—oh, I am sorry, pardon me—"Q. In the time that you worked with Sobell at Reeves Instrument Company" and Elitcher also worked for Reeves for a while—"or at any time, did you ever see Sobell take any papers or documents?"

Now is this where a case of goods sold and delivered, and they asked that, it might not mean anything, but in a spy case a question like that means something. Isn't that the charge here? Stealing papers and documents.

Now, let us see what the answer is. This is Elitcher's [fol. 2249] answer, not mine: "Well, in the course of his duties I did, as far as I know, I saw him take—he had a briefcase and he did take things out of Reeves Instrument. I presume that they had to do with work. We had another installation at Roosevelt Field, Long Island, and he went out there quite often, and I know that he did have a briefcase and he took material out, but what it was, or what the material was, I do not know." And that is his answer.

Is that poison or isn't it?

Is that a poisonous question by Saypol, the man who is working for us, for me? Yes, for me.

I don't like that kind of stuff. I want to tell you that I am more concerned with the safety of our country than he is, because I tell you, ladies and gentlemen, you injure the liberty or life of one citizen and you wipe the foundation out of our country. We don't do things like that. We don't like them done. I don't like them done.

Of course he took documents. The man had an important job; going out to Roosevelt Air Field. His job was communication, as Elitcher said.

It had to do with air flight and so on.

What do you think he took out, postage stamps? The man was doing experimental work at Reeves. He had [fol. 2250] people under him.

Did you hear in this case one single solitary suspicion that Sobell took anything? Now, remember, remember he worked for G. E. for several years, important secret work. He worked for Reeves, important secret work.

Now I will tell you this, I will tell you this, I think that the Government can have an inference drawn against it—I withdraw the word "Government," I am sorry. I don't mean to use our Government in that way. I say that you can hold it against Saypol, that although he had on the list of witnesses person after person from Schenectady, General Electric, person after person from Reeves on the list, not one single one was brought, not one single one. I take that as a commendation of Sobell, and you have a right to do it, too. A man who worked for years for these two firms, all secret Government work, not a whisper of suspicion against him, not a thing outside of that physical creature, Elitcher, who was trying to save his own skin.

I don't know. Do you see now why I said that I witnessed the most amazing experience in my court period? I would be horrified, ladies and gentlemen, if this thing was a disorderly conduct case, I would be horrified. I am rendered —I have no words to express it, at that man's attempt to [fol. 2251] endanger somebody else.

Do you remember there was another time that Elitcher said Sobell became angry. That other time was in July,

1948. In July, 1948, Elitcher already was scared. He was scared to death. He knew that he had been caught up with on his perjury, and I am just telling you what I brought out here on cross examination, and you have a right to ask the Judge have read to you any of this testimony, and I fervently hope that during the course of the trial you will do that because you see we were mentioned three weeks ago. We were mentioned three weeks ago, and then you heard a mass of testimony since and nothing else about our being a conspirator, nothing else. So, for goodness' sake, if your memory is doubtful, have some of the minutes, some of the stuff read to you.

I urge upon you, have some of my cross-examination of Elitcher read to you. You know, I think that is what would show the story to be, the guy who was so scared that he noticed he was being trailed from Washington.

Now look, you go out for an automobile ride, you are not scared. You do not even look back to see if you are trailed. You wouldn't even know if you were trailed, but the man knew he was trailed.

[fol. 2252] What does that mean? It means that he was scared and he figured he would be trailed.

Where did he come to? He drove up to Sobell's house, you remember, in Flushing. He wanted to stay over with his wife and kids, and he came in and he said to Sobell, "I think I have been followed by the FBI."

And again Sobell became angry—do you remember that testimony? Sobell became angry. Now here again we have the same procedure; add a little to that and you have the picture.

Sobell became angry and told him, "Max, you shouldn't have come here. I have dangerous material."

What kind of a conspirator does that? If you had dangerous material in there, would you let Max Elitcher, a guy who has been stalling for years, according to his story, would you let him know about it?

But I brought out on cross-examination, I said, "Look Elitcher, at that time Sobell was doing important Government work, wasn't he, at Reeves?"

And he said "Yes."

Certainly Sobell was angry. Certainly he was angry.

Here is a man who brings the FBI to him so that he can be smeared with the smear of that fellow. You would be angry, too. Your whole job might be jeopardized. Why shouldn't he be angry, to slip in those few words to save [fol. 2253] his own skin? He became angry, he had dangerous material. Now, let's see what that dangerous material was. Did you hear what it was? Did you hear what it was? All he said was that he took a tin can that might have held film. For goodness' sakes, what kind of stuff was this? What is this that anybody could defend himself against?

I take out my wallet. It might have secret material. What kind of evidence is that? And those are the very words that Elitcher used, a can that might have contained film.

But to pin it home real strong he said, "Sobell said to me, 'I am tired. Will you go along with me to Rosenberg's house?' "

Do you remember that?

So I asked him, "You had just finished a trip from Washington. You were worried", and he answered, "Yes."

"You were tired."

"Yes."

"And Sobell asked you to go on with him? Did you drive?" I said, "How far is it from Flushing to Knickerbocker Village?" "Ten miles."

"And ten miles back."

And then I thought maybe the man—maybe the man [fol. 2254] by accident was telling the truth.

So I asked him, "Did you drive the car?" and he said, "No, Sobell drove it."

"Did you drive back?" "No, Sobell drove back."

Well, for goodness' sake, what kind of stuff is that? What is the Government—excuse me, what is Saypol handing you? On the basis of that he said to you, "We will convict this man under a statute that may take his life."

That is all in the evidence, it is all there written down for you to see, and that is what I went outside before to study, for a couple of other spots where his name was mentioned.

But if you do the same experiment that I did, cut out a couple of words, you will find that the whole thing is com-

pletely consonant with innocence, that Sobell had no part in such a thing.

I can tell you, that is where the poison slips in. Did he take any stuff from Reeves?

He said he was angry, "Rosenberg shouldn't have mentioned my name."

Stuff like that. Oh, now, now, we don't go for that sort of thing. That kind of stuff has been outlawed long ago. You try cases in a different way. You try cases now so as [fol. 2255] to arrive at the truth, not to besmirch people and not to save the skin of that miserable creature.

Is there one single solitary word that Sobell was involved with atom bomb secrets or the atom bomb dealings? Is there? Did Greenglass mention him?

And, by the way, it occurred to me, if he was a co-conspirator with Rosenberg, who was Greenglass's brother-in-law? Wouldn't Greenglass know him?

Did you hear a peep out of him from Greenglass's mouth or from Ruth Greenglass's mouth? Do you know now why Phillips and I couldn't understand what we need to answer? And I will tell you, ladies and gentlemen, and this I tell you solemnly without fear of any dispute, we don't have to answer a thing; we don't have to prove a thing and we don't have to disprove a thing. It is his job to prove that we are guilty. It is not our job to disprove it—remember that.

That kind of stuff coming out of a witness's mouth, a person like Elitcher—not with me, not with me, but then they brought in the killer-diller—the killer-diller. He was down in Mexico.

Well, let's see, let's see about that Mexican trip. I say that Sobell and his family went down to Mexico by airplane [fol. 2256] in his own name—how do you like that? I dare him deny that. I dare Saypol to deny that. And I am telling you that if they didn't know before they spoke to Danziger that Sobell went down to Mexico by air—if you remember the testimony of Bill Danziger, he told Saypol that the day that they left, that the Sobells left, he visited there to pick up some drill, and that they told him that they were going to Mexico by air line, so that at least—at least from the time that Saypol or his men spoke to Danziger, they knew that.

Any doubt about that?

Tell me, is it hard to find out if you take a trip to Mexico? I can probably find out in two hours if you took a trip to Mexico. You need a visa—that is the Mexican Consulate.

You go and buy an airplane ticket.

How many air lines are there to Mexico? I can find out in two hours without Mr. Norton and without Mr. Harrington and without Mr. Branigan—I could find out by myself.

I would send my clerk out and he will find out if you went to Mexico and if you went in your own name.

And I tell you, and I say I have a right to deduce that from the evidence that that is what happened. So up to [fol. 2257] that point there is no flight, is there, if I go to Mexico in my own name, with my family? Nothing wrong.

I would like to see Saypol try to stop me.

And when they got to Mexico—when they got to Mexico they took an apartment there. In whose name did they take the apartment? They brought a witness from Mexico, Manuel de Los Rios or something like that, and Mr. Cohn asked him, "Under what name did you know him?" or some words to that effect, and he said, "Sobell"—do you remember that? If you don't just ask for the testimony to be read to you.

Manuel de Los Rios' testimony is down here, it cannot be changed.

So they leave here for Mexico, in their own name, and they take an apartment in Mexico in their own name.

Now they put in a couple of flights to Tampico, Vera Cruz.

I don't care what kind of a brainstorm Sobell might have had. I don't care either if he had read in the newspapers something about Rosenberg or friends of his being involved. I don't care why. That is his own business. They could travel to Tampico and Vera Cruz under any name he wants, but he did not hide his identity because at the [fol. 2257a] time that he flew to Tampico and to Vera Cruz and back to Mexico City, Helen Sobell and the children were right in that apartment, and Manuel de Los Rios told you so, didn't he?

[fol. 2258] Do you remember that? He told you that. Because he received a letter and he said, "I went down to Mrs.

Sobell and gave it to her, because it was addressed 'Dear Helen.' "

Now, I am telling you, all right, if he had a brain-storm, whatever the reason was, that is not the case; because if he was trying to conceal himself, would he leave the facts in such a way that they can come right to him? Isn't that fair to assume?

But this wasn't Elitcher, this was Saypol; and I remember reading that he went down to Mexico himself, and I presume he went down to dig this up, and he dug up this poison. Why? Just take that out; take those two things out. You have no active conspiracy, have you? He was living there openly. And let me tell you, I dare say that Mr. Saypol, if he was serving us right, would have gone over to that house where the Sobells lived and found out, if I am telling you an untruth that they lived openly, in their own name. If Mr. Saypol was serving me right, he would have done that. I don't know whether he did that or not. I never asked him. But I tell you, have a right to say that when they bring Manuel de Rios up here to testify that that is the fact, that I have a right to assume it is a fact?

[fol. 2259] Now, will you tell me, if that is a conspiracy, God forgive us. I don't want any conspirators like that on behalf of our own country; I don't want any people helping out our country that way.

If that is a conspiracy, to take a visa from the Mexican Consulate, get on their air plane in their own name; take an apartment in their own name, stay there, I tell you, if that is concealment, you can have it.

I don't care why he went to Tampico under an assumed name and I don't care why he went to Vera Cruz. It is none of our business. I want to know, did he act in such a way as to conceal himself? I tell you, he did not. The same thing if you, Mr. Christie, live in the house where you do live and walk out and meet somebody and you give him a different name, but your house is there and you come back to that same house; is that concealment? I don't care what reason you had for giving the wrong name to the other person, I don't care. Maybe you had a brain-storm, maybe you had a reason, I don't care.

And then look, a little bit more poison——
Let's have 25, will you?

A little more poison. Do you remember Government's Exhibit 25? Well now, I don't care if he used Sobell's name, typewritten; gives his address, gives his occupa-
[fol. 2260] tion—you will have this, so you don't have to strain your eyes from where you are—and in a few spots, it has the handwriting of Mr. Huggins. I don't want to hurt Mr. Huggins. I suppose he does his job as best he can. But do you remember when I cross-examined him, was he telling you the full story? I asked him, he said he got all of this information, from the very beginning to the very end, from Sobell, while Sobell was sitting there.

Now, how do you explain then that "Sobell, Morton" is typewritten, and then right in the very same line, in Mr. Huggins' handwriting, "Wife—"accompanied by wife"; and then again, what did he do, take up his typewriter again and put in here "None—4/11/17, New York, N. Y."; and then put his typewriter down and pick up his pen and ask Sobell his age, "33"? I don't believe that. But that isn't important. The important thing I am getting at is, look at that notation at the bottom, in Huggins' handwriting, "Deported from Mexico." "Deported from Mexico." I thought maybe there was something to that, and I questioned him. Now, wait a second, just wait a second. Mexico, you know, is a civilized country. Mexico has a government; it has courts; it has Immigration officials; it has the same kind of people and the same kind of institutions that we
[fol. 2261] have. Do we deport anybody or prove deportation by having Mr. Saypol get on the stand and say, "From my observation he was deported from Mexico"?

Now, I didn't use those words. Huggins used the word; and that was another thing that I made sure of this morning; that was another thing I made sure this morning when I stayed outside; I wanted to look through some of his testimony. Is that the way anybody proves deportation? And Mr. Huggins sits there and says, from his observation he was deported; and Mr. Phillips at one time asked him a question, "Well, there are Mexican police or Mexican authorities there; did you ask them?" He said, "No." That

is in here. I didn't make it up. That is in here. He said, "No", and he kept on insisting it was from his own observation.

And this is my question: "And they told you some of the matters that is contained in this card; is that right?"—no, that is Mr. Phillips' question— "A. They didn't tell me anything that is contained on there, no, they didn't tell me anything that is contained on that card."

Now, that is Huggins' testimony, so we can take it, and it was correct.

Then we come over here, "Now, where did you get that information"—sorry—"Where did that information come [fol. 2262] from that counsel just has referred to?" And do you know whose question that was? That was Judge Kaufman's question, "Where did that information come from that counsel has just referred to?" He says, "That is something I put on there myself from observation."

What kind of poison is that? I mean, I make an observation that you are deported, you become deported. If Mr. Saypol could bring here an optician's clerk from Vera Cruz or Tampico, if that was the fact, let him bring the court record in. Why didn't he bring some official to say that was the fact? I say, that is in line with the kind of stuff that has been put in against us all the way through, and I don't like it. I don't mean that I have got to win every case I try. I do my best in every case. I try to protect the rights of my client and I do that in every case. Sometimes a jury disagrees with me, but it is my opinion. It is all right, next time I try a case the jury agrees with me, that is all right, too. I like it fair and square. I like it not with poison. I like it decent and honestly. I like it in the tradition that I was brought up in, in this country. I don't like questions like Saypol asks, I don't like questions like that, Saypol, "Did he take any documents from Reeves?" Why, of course he took documents from Reeves every day in the [fol. 2263] week, every day in the year that he worked there. What is wrong about that? What kind of poison is that?

The Court: May I say to the audience that they will have to desist from any further demonstration. Proceed.

Mr. Kuntz: And you and I have to watch out for these

things. I say every little citizen must be protected or we undermine the very foundations of our country.

I was born here. I love this country. I do not coddle with anybody that will attempt to injure, even if that person happens to enjoy the office of the United States Attorney and he uses methods that we don't like; we are going to tell him so. Because we can take care of our criminals with decent methods and decent procedure so that you and I are protected at the same time, because tomorrow, who knows, one of your Elitchers might get on and point the finger at you and just add a word here and add a word there to save maybe his own skin.

There is an awful lot that we can talk about especially after three weeks when the testimony was only in the first day. Remember that. Maybe I should have and I was prepared to read a great deal of this testimony, but I think [fol. 2264] that in my summarizing it, if you have any doubt that I told you what is in there, just check on me and have it read, particularly the answers he gave on cross-examination. Have it read. I have never, I have never in my life made a misstatement to any Court or jury. Never. If I can't win a case fair and square and I can't prove to you a defendant's innocence fair and square I don't want to prove it, and you will find everything I said is borne out by the testimony there. If you have any doubt about anything have it read back to you. You have a right after three weeks' time, you have a right to refresh your recollection if you desire.

Somehow I do feel inadequate. I feel inadequate in this case for this reason: When somebody charges you in an indictment with doing certain things, you go out and you prepare to oppose them. I am telling you if you hunt from top to bottom of this indictment you won't find in there a word about Morton Sobell outside of the title in this case and in the parts that I read to you and look at how many pages it is with overt acts and everything; not a word about Morton Sobell. And then bringing in a miserable creature like Elitcher, a miserable man, I tell you, to save his own skin.

Let me tell you ladies and gentlemen, Mort Sobell has [fol. 2265] walked with dignity all his life and he has

raised his family with dignity and I tell you no matter what happens here he will continue to walk with dignity. Then we will leave little miserable Elitcher to his own conscience.

The Court: Are you through, Mr. Kuntz?

Mr. Kuntz: Yes, sir.

The Court: We will recess, ladies and gentlemen, for lunch until 2:00.

(Recess to 2:00 P. M.)

[fol. 2266] AFTERNOON SESSION—2 P. M.

SUMMATION BY MR. SAYPOL

Mr. Saypol: May it please the Court, Mr. Foreman, ladies and gentlemen of the jury, throughout the three weeks we have been together in this courtroom, I have observed that each of you has displayed great interest and close attention as the evidence was unfolded here. For your courtesy, for your consideration my colleagues and I acknowledge our appreciation.

Having heard the evidence, you are now fully equipped to decide the issue which the Court is about to submit to you for your final determination. Both sides have had full opportunity to place before you all the relevant facts. The learned Court, the Honorable Judge Irving Kaufman, has presided with patience and fairness to all of us. He is the final judge of the law as it is to be applied in this case. You, however, ladies and gentlemen, are the final judges of the facts and the truth. This is in the highest tradition of American justice, a system of justice found nowhere else in the world. It is in marked contrast to the system which prevail in certain parts of the world where people have lost their freedom. It is appropriate at the moment, in my zeal for the proper administration of that system of justice, of [fol. 2267] which I speak with pride, to digress for just a moment, and I shall not take long to say something about a truly amazing thing—a truly amazing thing even for one who though perhaps with no gray hairs, has had experience of over twenty years in the courts, and as I shall show you

in a moment, my concern with that amazing thing is that it should not inflame you and accomplish that which I am sure was not intended. We who have worked in these courts know that lawyers for defendants pursue certain well-defined courses. If a defendant can prevail on the law, that is what his counsel does; he pursues the issues on the law. If the facts are with him, what else need he do but show the facts? But when the lawyer, when some kind of lawyer has neither facts nor law, they have a game that they call kicking the prosecutor around, and that is the amazing thing that you have seen here this morning.

That is so well known that our courts have had the occasions to discuss it, and this Court has said as follows about that practice:

"The attempt to turn this trial of men, whose guilt was abundantly proved, into a trial of Government's counsel, though a not infrequent expedient of defendants who have no other recourse, ought not, in our opinion, to succeed."

[fol. 2268] You have seen such attempts, first in the suggestion that the Federal Bureau of Investigation and my staff and I are silly dupes and we have been befogged, we have been fooled. All I need say about that at the moment, if it has anything to do with the case, after all, you are not judging Government's counsel; you are judging defendants on the basis of testimony. If there has been any fooling, you will remember that one of the defendants made blanket negatives, blanket answers, in denial as to whether she knew Harry Gold, as to whether she had ever talked to David Greenglass about his work at Los Alamos, as to whether she or her husband ever talked about atomic bombs, and yet I showed you that in the grand jury, on the advice of her counsel, she refused to answer those questions on the ground that to answer them would be self-incriminating.

In the grand jury:

"Did you ever know Harry Gold? A. I refuse to answer on the ground that it tends to incriminate me.

"Q. Did you consult your counsel, Mr. Bloch, before you made that answer? A. Yes."

I leave it to you as to who may have been fooled. The suggestion that the FBI has been duped? The FBI is never

duped. The FBI never prosecutes anybody. The FBI never makes any complaint against anybody. The activities of [fol. 2269] the FBI are confined solely and exclusively to gathering the evidence and submitting it to the prosecutor for his decision as to whether or not it warrants submission to the consideration of a grand jury, citizens like you, for their evaluation and for their conclusion as to whether or not there should be a prosecution, and if there be, in the form of an indictment, as you have one here.

Another counsel was more pointed in his attack. He and his colleague had something to say about—poisoning? I had not intended to say this, but it is in the law books, as expressed by the United States Supreme Court—as counsel said, that I was not his personal choice and in his eyes I met with disfavor, I say to you—and you will appreciate it when I have read to you this quotation from the Supreme Court—it is to maintain the privilege and the opportunity of people like that to say those things about people like me, that I will keep trying to do the job I am doing. My only fear is that in a case like this, your prejudices shouldn't be so aroused as to be exercised unfavorably toward the clients they represent. I beg you, judge them for the guilt, as charged in the indictment. Don't judge the defendants by their lawyers' bad taste or bad manners. That is not the thing I want you to do.

Mr. Justice Sutherland has said for the Supreme Court that the United States Attorney is a representative not of [fol. 2270] an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. As such he is in a peculiar, a very peculiar and a very definite sense the servant of the law, the two fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor, indeed he should do, but while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. And this I emphasize: It is fair to say that the average jury

in a greater or less degree has confidence that these obligations which so plainly rest upon the prosecuting attorney will be faithfully observed.

In the face of some of the accusations that have been made, I am completely at ease that you as a jury, even though I am not on trial, and you can't convict me or my colleagues, that you will be the best judges of whether the conduct of the prosecution here has been fair or not.

I was a little puzzled by the vitriol in the latter attack, [fol. 2271] and as I sat and reflected I sent for another law book and I find that in 1936 a lawyer by the name of Edward Kuntz was a candidate for election to the Court of General Sessions.

Mr. Kuntz: Wait a second. What has this got to do with this case?

The Court: No, let us not go into that.

Mr. Saypol: I think I have the right to explain the personal——

Mr. Kuntz: All right, I will let him state what I was a candidate for.

Mr. E. H. Bloch: If your Honor please, I may not have anything to do with this, but I believe any discussion about Edward Kuntz in any of his political ideas or candidacy might prejudice my client.

The Court: Excuse me, gentlemen. I would rather not have you go into it.

Mr. Kuntz: I am not worried about it.

The Court: I say I would rather not have him go into it.

Mr. Saypol: The most I shall say is that it appears to me that there may have been a motive to get even with me, but I emphasize, and I emphasize, and I beg of you, no matter how offensive that may have been to you, please do not fasten guilt for that intemperate, that improper attack on [fol. 2271a] these defendants, because if you do it will not be right.

Now, let us get on with light and without heat.

The grand jury for this Court has charged that these three defendants on trial before and several others, who were named with them but who are not on trial before you, were members of a conspiracy to commit espionage for the advantage of the Soviet Union.

[fol. 2272] The grand jury has charged that these three defendants and others agreed to communicate, deliver and transmit to the Soviet Union, documents, writings and sketches relating to various aspects of the national defense of the United States. I told you in my opening, and as you have seen and heard this case is one of the most important that has ever been submitted to a jury in this country. I feel most inadequate to express *to express* to you in words the enormity of the thing, but its seriousness and implications for all of us does not make it a complicated case. The issue here is a simple one. You must determine whether or not these defendants were parties to this conspiracy to transmit information to the Soviet Union.

A conspiracy, of course, is merely an agreement between two or more persons to violate some law of this country—in this case the Espionage law. The law actually need not be broken, as it was here. The agreement alone to break the law would be enough. Every person whom you should find entered into this agreement becomes guilty of the crime of conspiracy. If any one of the members of the conspiracy commits any overt acts, any physical act to further the objects of the conspiracy, all are guilty.

In this case if you find that the three defendants had [fol. 2273] become members of this conspiracy to commit espionage, they all become guilty as charged in the indictment.

If any one of them, Rosenberg, Mrs. Rosenberg or any one of the co-conspirators who are not on trial, commits any one act in furtherance of this conspiracy, such as meetings and conferences between any of the conspirators in furtherance of the conspiracy, such as trips made by any of the conspirators in furtherance of the conspiracy, like Harry Gold's trip to Albuquerque or Sobell's drive with Max Elitcher to Catherine Slip—any one such act by any conspirator supplies the requirements of the law as to all those who were members of this conspiracy.

In this case the grand jury has listed 12 overt acts by some of the defendants and some of the co-conspirators. The argument by the defendant Sobell that he is not mentioned in any overt act is specious and wholly without merit, and when the Court charges you on the law I am sure it will be amply demonstrated.

Why, for that matter neither is the defendant Yakovlev nor the co-conspirator Harry Gold named in any of the overt acts. The conspiracy law passed by Congress says clearly that the grand jury need charge and the Government need prove only one overt act by any of the members of a conspiracy.

[fol. 2274] The grand jury here, however, as I have told you, listed 12 of such acts by various of the co-defendants and the co-conspirators. We, as a matter of fact, have proven everyone of these described overt acts. As must be obvious, the Government has presented insurmountable evidence on literally each overt act, including overt acts by each and every one of the defendants and co-conspirators in this indictment, and the proof includes such activity by the defendant Sobell.

Let me say a little more on conspiracy. That means that the grand jury has charged that these people, the defendants and the co-conspirators, were all parties to an agreement with a common object: Despatching information vital to the national defense to the Soviet Union to be used to the advantage of the Soviet Union.

A conspiracy in operation, such as the conspiracy we have here, is in many ways familiar to the structure of a business enterprise, with a number of partners. All of the partners and employees of the firm do not do the same thing at the same time. While one partner talks to a customer, another may be negotiating with another prospect. While one employee is traveling, selling merchandise, so another employee may be in another city, buying merchandise, but the act of each partner and each employee is not an individual, isolated act performed only for the ben-fit of the [fol. 2275] actor. Each act by each party, by each employer in the course of business is an act performed for the benefit of the firm and for the benefit of his fellows.

Imagine a wheel. In the center of the wheel, Rosenberg, reaching out like the tentacles of an octopus.

Rosenberg to David Greenglass, Ethel Rosenberg, Ruth Greenglass; Rosenberg to Harry Gold; Rosenberg, Yakovlev. Information obtained, supplied. Rosenberg, Sobell, Elitcher —always the objective in the center coming from all the legs, all the tentacles going to the one center, solely for

the one object: The benefit of Soviet Russia. The sources, Government sources, Los Alamos, atomic information.

Sobell, Elitcher, information from the Navy, relating particularly to gunfire control; always secret, always classified, always of advantage to a foreign government.

Sometimes important developments in the business make it necessary for two or more of the partners—and you can think of them as Rosenberg or partners—make it necessary for two or more of the partners to put their heads together and work on a troublesome customer, or to try and sway an important prospect.

So, too, in this case when Elitcher made known his deci- [fol. 2276] sion to leave the Bureau of Ordnance in Washington and come to New York, Rosenberg and Sobell met together with Elitcher and jointly tried to persuade him to change his plans, to serve their interests in the common goal.

The evidence here has made it clear that each act by Sobell, and each act by Rosenberg and Mrs. Rosenberg, whether it be together or alone, was part and parcel of the one and the same conspiracy—a conspiracy, an agreement, an understanding on the part of all these people to the end that vital national defense information of this country should be furnished to the Soviet Union, and, further, that suitable recruits be obtained for this Soviet espionage ring.

This logic demonstrates the soundness of a Congressional determination that an act by any one of a co-conspirators be deemed the act of all of them. The one who committed the act was the agent, the representative of these partners in crime for that particular purpose.

All of that addressed to the straw man that has been set up that Sobell is not named in any of the overt acts. The plain and simple answer is that the grand jury doesn't have to do anything of the kind: having named them as defendants, it is for you as a trial jury to decide whether the conduct of a defendant, the conduct of his co-defendants, the [fol. 2277] evidence supplied to you by the witnesses has him in the conspiracy and makes him chargeable by you as a conspirator.

Let us now review the evidence in the case. It will be brief because you saw the witnesses, you heard them, you

examined the exhibits. Your recollection is the standard which will prevail. The association of Rosenberg and Sobell began at City College, and it continues until today. They have been held together by one common bond: Their mutual devotion to Communism and the Soviet Union, and their membership in this conspiracy to commit espionage for that Soviet Union. That is why their classmate, Max Elitcher, was asked to join the Young Communist League when they were at college. That is why Sobell recruited Elitcher into the Communist Party. That is why Sobell and Rosenberg joined in the concerted action to recruit Elitcher into their Soviet espionage ring.

[fol. 2278] While Sobell was chairman of his Communist Party unit in Washington, delivering to its members weekly directives concerning worship of the Soviet Union, Rosenberg was working his way up in the Communist Party underground. The significance of the relations of the membership in this Party, of their membership, the defendants' membership, conspirators' membership, their incidental allegiance to the Communist Party of the United States of America and the Communist National, is revealed in the testimony of Elizabeth Bentley.

There has been some suggestion here that she is a professional witness. At the time that Rosenberg told Sobell that he had had contact with Bentley, that she knew him; had telephoned to him as "Julie," was on the very day that she made a full disclosure, on July 30, 1948, before the United States Senate.

Mr. Phillips: Just a moment. I object to the United States Attorney saying "on the day Rosenberg telephoned"——

The Court: All right, your objection is noted. Be seated, Mr. Phillips.

Your recollection will govern, ladies and gentlemen, as to whether or not that is the fact.

Try not to interrupt, Mr. Phillips.

[fol. 2279] Mr. Phillips: Testimony——

The Court: Mr. Phillips, try not to interrupt. Will you please be seated?

Mr. Phillips: I haven't finished my objection, if your Honor please. May I say it?

The Court: I have your objection. The jury will determine whether or not it is on that day.

Mr. Phillips: That is not my objection. My objection is that the testimony is not that Rosenberg telephoned, but that somebody told somebody that Rosenberg telephoned.

The Court: Very well.

Mr. Phillips: There is a difference.

The Court: Your recollection, ladies and gentlemen, of what the testimony is will govern.

Mr. Saypol: May I proceed?

The Court: Please.

Mr. Saypol: You will recall that at that time there was no talk of writing books, of making lectures or these veiled insinuations about professional religionists. She made a disclosure to a legislative body of this country, and you may infer as to whether or not that wasn't the thing that made Rosenberg apprehensive about possible detection.

You saw her and heard her on the witness stand here. [fol. 2280] You are in a position to judge in the whole setting the substance of her narrative. She revealed the significance of membership in the Party, open membership and underground membership; the nature of its activities, including espionage in behalf of Soviet Russia; how it operated; how its contacts were established and maintained, always secret, always furtive, always to avoid detection.

Rosenberg told Elitcher at Manny Wolf's that night in 1948, just as Rosenberg and Ethel Rosenberg had told Ruth Greenglass that night in November, 1944, how he had realized the ambition of his life. He told them how he had gone from one Communist Party contact to another until he had achieved the coveted status of a Communist Party espionage agent. Rosenberg's Communist espionage superior in the early 1940s was Jacob Golos, a member of the Communist Control Commission in this country, one of the top Soviet espionage agents. During the time prior to Golos's death, when Golos was Rosenberg's Communist espionage superior, Rosenberg became known to Elizabeth Bentley, who had gone from membership in the Communist Party to a position of importance in Golos's espionage apparatus. At one time she rose in Party stature to the position of order-

ing Earl Browder around. We know this from her testimony in the courtroom.

[fol. 2281] We know of Golos's clandestine meeting, in which he received information from Julius, the engineer who lived in Knickerbocker Village. We know this from the telephone calls Miss Bentley received from this engineer, from Knickerbocker Village, Julius, as an intermediary, arranging clandestine meetings between Julius and Golos, his Communist espionage superior. But most important of all we know of Rosenberg's dealings with Bentley from Statements made by Rosenberg himself to Max Elitcher and David Greenglass.

It was on the night of July 30, 1948, when Miss Bentley's true identity and her espionage activities with Golos and other agents were on every front page in the country for the first time, Elitcher accompanied Sobell that night on this trip to Rosenberg's apartment to deliver material to Rosenberg. Rosenberg confided to Sobell on that night that he was the one who knew Golos, but expressed the hope that Miss Bentley might not be able to identify him. On another occasion Rosenberg admitted to David Greenglass, who does not know Elitcher and never had any connection with him, that he, Rosenberg, was the one who had dealt with Golos and was afraid that Miss Bentley might be able to identify him.

[fol. 2282] The last time Miss Bentley spoke to Julius was in November, 1943. We know that after the death of Golos Rosenberg continued his espionage activities. We do not know all of the details.

The identity of some of the other traitors who sold their country down the river along with Rosenberg and Sobell remains undisclosed. We know that such people exist because of Rosenberg's boasting to Greenglass of the extent of his espionage activities, how he had obtained information on the secret Government project concerning the Sky Platform, concerning the proximity fuse, scientific advances on atomic power for airplanes. There can be no question as to the secret, classified nature of this material, that was turned over. It is conceded that the atom bomb experiments and its development were vital to national defense. You heard it established as being of advantage to a foreign

power. You heard Dr. Koski's testimony in the course of Greenglass's testimony as to the significance of the lens mold experiments. You heard Mr. Deery, who testified in respect of Exhibit 8, the cross-section of the atom bomb itself, the Nagasaki bomb. You heard Colonel Landsdale who described the protective methods taken at Los Alamos, including secrecy.

These defendants were not dealing in public information or magazine articles. The testimony of the highly secret [fol. 2283] nature of the atom bomb material, of the classified nature of the work being done by Sobell at General Electric and at Reeves is established and uncontradicted.

There has been some argument here in the course of the defendants' summation with respect to those exhibits in evidence, the sketches of the lens mold, for instance, the sketch of the bomb, and a demand has been voiced, I take it, hardly serious, although highly vocal: where are those exhibits? Why aren't they produced here? Well, isn't it obvious having been delivered by Greenglass to Rosenberg, aren't the originals now in the place which Rosenberg or which the defendants intended, some place far away on the other side of the ocean behind the Iron Curtain? How could they possibly be here?

There is some suggestion that the Greenglasses have concocted this story. Couldn't they concoct it and produce exhibits and say, "These are the ones we made at the time. Some of them we kept"?

Talking about concoction, if there is concoction, why did the Greenglasses have to bring in Harry Gold about the $500.? The fact of the $500. is confirmed by the deposit in a bank in Albuquerque the day after the meeting was had. The only time the Greenglasses ever saw Harry Gold was on June 3, 1945, at Los Alamos, but if there was a con- [fol. 2284] cocted story, couldn't they have gotten together and said they got the $500. from Rosenberg? Where or why should they dig up a Gold?

We know of these other henchmen of Rosenberg in this plot by him, by Sobell, by the Soviet Union and its representatives and by other traitorous Americans to deliver the safeguards to our security into the hands of a power that would wipe us off the face of the earth and destroy its

peace. We don't know all the details, because the only living people who can supply the details are the defendants. Rosenberg and his wife have added the supreme touch to their betrayal of this country by taking the stand before you, by taking advantage of every legal opportunity that is afforded defendants, and then, by lying and lying and lying here, brazenly in an attempt to deceive you, to lie their way out of what they did.

I have said that there is much about this that we have not disclosed or that we do not know, but there is one part of the scheme that we do know about. You know about it because it was disclosed right before you. We know that these conspirators stole the most important scientific secrets ever known to mankind from this country and delivered them to the Soviet Union. We know that Julius Rosenberg and Ethel Rosenberg infected Ruth and David Greenglass with the poison of Communist ideology. We know that [fol. 2285] Julius Rosenberg and Ethel Rosenberg were engaged in a continuing campaign to enlist recruits for the Soviet cause through the Communist Party. And we know that in 1944 Julius and Ethel Rosenberg carried their campaign one step further and persuaded David Greenglass to steal atomic bomb secrets for the Rosenbergs to be turned over to the Soviet Union.

There is no condonation for the activities of the Greenglasses in 1944 and 1945. David Greenglass is a confessed member of the Rosenberg espionage ring. You heard his testimony and you observed him. You heard him confess his guilt. You heard him describe in detail his participation in this conspiracy. By his own plea of guilty, by his own voluntary act, without weaving a web of lies in an attempt to deceive you, he has made himself liable to the death penalty, too. The spurious defense that Greenglass, or the Greenglasses, in order to satisfy a business grudge, a business dispute against the Rosenbergs has concocted a story about espionage, making himself liable to the capital penalty by his plea of guilty because of the business disagreement, is as much of a concoction as the story of the defendants that Greenglass went to his worst enemy, Julius Rosenberg, for help when he wanted to flee the country.

Greenglass's relations toward his older sister, Ethel, and

[fol. 2286] her husband Julius were such that he was willing prey to their Communistic propaganda. He committed this crime because they persuaded him to do it.

The issue in this case, we are all agreed, transcends any family consideration; but clearly the breach of family loyalty is that of an older sister and brother-in-law dragging an American soldier into the sordid business of betraying his country for the ben-fit of the Soviet Union. The difference between the Greenglasses and the Rosenbergs? The Greenglasses have told the truth. They have tried to make amends for the hurt which has been done to our nation and to the world.

[fol. 2287] The Rosenbergs, on the other hand, have magnified their sins by their lying.

Further, Julius and Ethel Rosenberg sent Ruth Greenglass to Albuquerque, in November of 1944 to get the atom bomb information from David Greenglass. He came to New York on a furlough in January, 1945. It was on that furlough that Rosenberg received the first sketches of a high explosive lens. It was on that furlough that the descriptive material was given to Mrs. Rosenberg to be typed up. It was during that furlough that Rosenberg took David to be pumped for further secret information on the high explosive lens by another Russian spy in the car here in midtown Manhattan.

It was during that furlough that the Rosenbergs had David and Ruth at their home and displayed to them Ann Sidorovich, who was the Soviet agent, scheduled to make the trip to Albuquerque to collect more atom bomb information from David.

A query has been thrust at me from you: Where is Ann Sidorovich? They know why I can't say, but I say Ann Sidorovich was their friend. I ask where is Ann Sidorovich? So far as I know she is still their friend. It was on that very night the plans were formulated even to the extent that in execution, consideration was given to the probability that perhaps Ann Sidorovich might not be available and [fol. 2288] that a different agent might have to be sent ultimately to Albuquerque. That is when, in the words of Julius Rosenberg the simplest things are the best. The irregular Jello box cover is cut. One piece went to Mrs.

Greenglass, and the other was last seen by both of them in the possession of Julius Rosenberg that night.

Recalling the expression, "The simplest things are best", the simplest way, the way perhaps least possible for detection when it came to passport photographs was to go right behind this building, right under the FBI, to get the pictures taken. It is literally true—of course it was on the demand of the defendant that the information was elicited. That evidence was testified to here by the witness Schneider, was not obtained until almost the very moment that it was laid open before you.

Mr. Bloch had a lot of things to say about Greenglass. Ladies and gentlemen, the greetings from Julius, the delivery of this piece of cardboard cut by Julius Rosenberg, given to Harry Gold by the Soviet Vice Consul, Yakovlev, does not come to you from Greenglass alone. Every word that David and Ruth Greenglass spoke on this stand about that incident was corroborated by Harry Gold, a man whom they had never seen before this day in June 1945, and a man they never saw again from that day until this con- [fol. 2289] spiracy was ended.

The history of this Jello box side, the greetings from Julius and Greenglass's whereabouts in Albuquerque come to us not only from Ruth and David, but from Harry Gold in this courtroom—a man concerning whom there cannot even be a suggestion of motive because, as far as he is concerned, the die has already been cast. The charges against him have already been disposed of. He has been sentenced to thirty years, the maximum term of imprisonment. He can gain nothing from testifying as he did in this courtroom except the initial relief, the moral satisfaction in his soul of having told the truth and tried to make amends. Harry Gold, who furnished the absolute corroboration of the testimony of the Greenglasses, forged the necessary link in the chain that points indisputably to the guilt of the Rosenbergs.

Not one question was asked of him by any defendant on cross-examination. It was so obvious to everyone in this courtroom that he was telling the complete truth when he

described his trip to Greenglass, after having substituted for a woman espionage courier who was supposed to go.

We know who that woman was. She was Ann Sidorovich, whom Julius and Ethel Rosenberg had at their home that night in January of 1945 when the Greenglasses were there. [fol. 2290] Not a question was asked of Harry Gold, who received this piece of cardboard that went from the hands of Rosenberg into the hands of his partner in Soviet espionage, the fugitive defendant Anatoli Yakovlev.

The atom bomb secrets stolen by Greenglass at the instigation of the Rosenbergs were delivered by Harry Gold right into the hands of an official representative of the Soviet Union. The veracity of David and Ruth Greenglass and of Harry Gold is established by documentary evidence and connot be contradicted.

You have in evidence before you the registration card from the Hotel Hilton in Albuquerque, which shows that he was registered there on June 3, 1945. You have before you the transcript of the record of the Albuquerque Bank showing that on the morning of June 4, 1945, Ruth Greenglass opened a bank account in Albuquerque and made an initial deposit of $400. in cash—just as she and David testified they did here on the witness stand right before you.

Ann Sidorovich did not go to Albuquerque to get this atom bomb information for Rosenberg and the Soviet Union. Harry Gold did, and Harry Gold went on the orders of his Soviet espionage superior, the defendant Anatoli Yakovlev, the Soviet Vice Consul in New York.

Exhibit 4-B, the other part of this Jello box, last seen in [fol. 2291] Rosenberg's hands, next appeared in the hands of Soviet official Yakovlev. He handed that recognition signal to Harry Gold. He gave Harry Gold the address in Albuquerque, to Rosenberg's brother-in-law, David Greenglass. He told Harry Gold to bring Greenglass greetings from Julius. Gold made the visit to Albuquerque, as we have seen, on June 3, 1945. He brought the greetings from Julius to David. He carried the piece of the Jello box that Julius Rosenberg had kept in the first instance. On that Sunday in June, Gold told you that he gave Greenglass $500. in an envelope. Gold received and delivered the atom

bomb information from Greenglass alone with other information he had obtained from Dr. Klaus Fuchs on the same trip to his Soviet superior, Yakovlev.

On David's September furlough Rosenberg got from him the cross-section sketch of the atom bomb itself and a 12-page description of this vital weapon. This description of the atom bomb, destined for delivery to the Soviet Union, was typed up by the defendant Ethel Rosenberg that afternoon at her apartment at 10 Monroe Street. Just so had she on countless other occasions sat at that typewriter and struck the keys, blow by blow, against her own country in the interests of the Soviets.

In February of 1950, Dr. Fuchs was arrested. He con- [fol. 2292] fessed his activities as a spy for the Soviet Union. You have heard of the part that he performed while he was at Los Alamos.

Rosenberg's position in the Soviet espionage hierarchy in this country was such that he knew that on that trip out West to see Greenglass, Harry Gold was the one that had also collected information at the same time on the atom bomb from Dr. Fuchs.

Rosenberg knew that when Dr. Fuchs disclosed to the authorities what had happened, that he must identify Harry Gold as the espionage agent who had come to him in New Mexico. Rosenberg knew that Harry Gold had dealt also at some time with David Greenglass. Rosenberg knew that David Greenglass had been recruited into this espionage work by himself and his wife. That is when Rosenberg hurried to Greenglass to convey to him the necessity, the urgency of getting out of the country, and when Greenglass first looked at Harry Gold's picture in the newspaper in Rosenberg's hands, he and his wife didn't recognize him immediately as the same man whom they had seen on but this single occasion, who had come to them in Albuquerque on Sunday, June 3, 1945.

[fol. 2293] Anyone might hesitate before positively identifying such a picture of one whom one hadn't seen but briefly five years before. But while Greenglass had his doubts, Rosenberg had none. If Greenglass was falsifying, couldn't he have said he recognized the picture right away? Who could contradict that? Rosenberg knew that Harry

Gold was the man who went to get the atom bomb information from Greenglass. He knew that because he had arranged to send him. Rosenberg knew that because he had gotten that Jello box piece and the instructions into the hands of Yakovlev for delivery to Harry Gold. Rosenberg's prediction that when it reached, and when the disclosures came, there would come a time that Gold might point to Greenglass, that prediction eventuated, and in May, Harry Gold was arrested.

It now became even more urgent for Greenglass to flee the country, in fact, to be chased out of the country. The truth was beginning to catch up with the Rosenbergs and their crowd. The passport photos of the Greenglass family were taken at Rosenberg's insistence. Rosenberg asked for five sets, but Greenglass had six sets taken. The five sets are now undoubtedly in the hands of Rosenberg's Soviet partners, but the sixth set is here, in this courtroom, before you as Government's Exhibits 9-A and 9-B.

[fol. 2294] You heard Mr. Schneider testify that for passport purposes three sets were required. Those of you who have had experience with passports know that when families travel in a group pictures are required of a parent or the parents and children who are traveling with them, and yet one might ask, "Why is more than one set of three pictures necessary?" The answer to that lies in the fact — and you may infer it — that in order to make possible this skipping furtively from country to country, forged and false passports are necessary, and perhaps in perpetrating a forgery, a false passport, mistakes might be made, pictures might be mutilated, different passports might be required, depending on the route to be taken, the most felicitous route, one indicating the least possible likelihood of detection, and that is why I suggest you may infer more than the usual number is taken.

Rosenberg gave Greenglass $1,000, and later $4,000, wrapped in this very piece of brown paper here in evidence before you, Government's Exhibit 10. Greenglass gave this money to Louis Abel and asked Abel to hide it for him. Abel hid it and it remained in Abel's hassock to June 16, 1950, when it was turned over to Greenglass's attorney. That piece of paper was identified here by Abel, before

that by Greenglass, and after that by Mrs. Pagano, in the [fol. 2295] lawyer's office, who actually had it delivered to him by Abel.

Where did Rosenberg get this $4,000.? Certainly it is evident that Greenglass never had that much, and it appears that Rosenberg never could have had that much.

The Court: Mr. Saypol, you have a half hour.

Mr. Saypol: Yes, thank you.

He admitted on the stand that he did not have it any more than he had the other moneys he paid Greenglass during this conspiracy. He didn't have that money any more than Harry Gold had the $500. he gave to Greenglass in June of 1945, which was deposited in the Albuquerque Bank. All of that money came from the same source, delivered in cash, from the Soviet Union, an investment which paid handsome dividends to the Soviet Union at a cost to this country, the extent of which must be measured in lives more than in money.

When Rosenberg gave Greenglass the money, he told him to flee to safety by going from this country to Mexico, from where he would eventually embark for Europe, from the Mexican seaport of Vera Cruz. It was after that that Ethel Rosenberg, laden with gifts, went to Ruth Greenglass and asked for assurance that David wouldn't talk so that the truth of the Rosenbergs' treachery and disloyalty would [fol. 2296] not be discovered, so that the Rosenbergs could continue to serve their master, the Soviet Union.

Added to the testimony of the two Greenglasses, Max Elitcher, the testimony of Harry Gold, the registration card, the bank account, the Jello box, you have the testimony of Ruth Greenglass's young sister, Dorothy, who told you how Julius Rosenberg chased her into the bathroom, behind closed doors, so that he could talk to Ruth Greenglass alone. You have the testimony of Dr. Bernhardt about Rosenberg's inquiry concerning vaccination for a veteran who was going to Mexico. The testimony of these witnesses prove beyond any doubt the verity of what the Greenglasses have sworn to in this courtroom.

The Rosenbergs knew that their glib denials on the witness stand could never overcome this corroboration. So Rosenberg decided to admit these two incidents—and what

was his explanation? Yes, he had told Dorothy to leave the room so he could talk to Ruth alone. The reason was that he could hear Ruth tell him that David might do something wrong by taking something or other from the project at which he was working, and so Julius could tell Ruth, David above all, should be sure not to do anything wrong. [fol. 2297] We know what Julius Rosenberg told Ruth Greenglass on that occasion and what he and his wife told Ruth and David on every occasion when they were together. The Rosenbergs told them to go and commit espionage in the interests of communism in the Soviet Union, just as Rosenberg and Sobell told that to Elitcher and countless others, and that is what happened.

As to the Dr. Bernhardt incident, Rosenberg had to admit that, too, because he knew that no one would take his word against that of a doctor, who obviously has no interest in the outcome of this case. As his explanation for this incident Rosenberg asks you to believe the story of how his mortal enemy, David Greenglass, who was out to get even with him, selected Julius Rosenberg, out of all the friends and relatives he has in the world, and Rosenberg asks you to believe that the help Greenglass wanted was $2,000. in cash, so that he could go to Mexico, or in the alternative, a doctor's certificate concerning smallpox vaccination. Perhaps it is that explanation of the defendants here that requires vaccination.

It was around this time that Rosenberg described for us the scene in which Greenglass made an urgent phone call to him, as a result of which Rosenberg dropped [fol. 2298] everything and rushed over to meet Greenglass at Greenglass's request, I think a day or two or three days later, only to be told that Greenglass had company and that Rosenberg should come back some other time; and Rosenberg admits that in spite of this hatred for Greenglass they were walking together late in May, 1950. He admits that because he heard Greenglass testify on the stand that during this walk they ran into the Einsohns, two friends of the Greenglasses. That meant to Rosenberg two more living people to give him the lie, if he should deny that this incident happened.

You heard the Rosenbergs testify here. You heard how

anxious they were to help this country by telling the truth about their activities. You heard them tell about the $21. console table. You heard the testimony about what was done to that console table, so that it was used for microfilming. How strange, on the one hand, the testimony from the Greenglasses that that was a present from the Soviet, the testimony from the Rosenbergs that they paid $21. for it in 1944 and 1945, when furniture was scarce, at Macy's; that it was delivered; and then a disinterested woman, even in the face of adroit cross-examination, resolute in her determination to tell the truth, telling the truth, she saw [fol. 2299] the table. Mrs. Rosenberg said it was a wedding present from a friend of Julius or her husband, whom they hadn't seen for many years, and this remarkably strange behavior taking the best piece of furniture in the house and storing it in the closet—why did they have to hide it? The source was from a friend, a friend with whom they had been working for ten years, in a type of activity which was perilous to the welfare of our country.

You heard Greenglass testify that just as he was ordered to leave the country by Rosenberg and just as Joel Barr fled the country, Rosenberg and his family were also prepared to flee the United States and seek refuge behind the iron curtain. You heard Ethel Rosenberg swear before you only yesterday that she and Julius and their children did not have passport pictures taken at that time; they never had passport pictures taken, she said. To admit that would be to admit the preparation for flight as Soviet espionage agents, for an ultimate destination behind the iron curtain.

Yesterday you heard Mr. Schneider identify both of them as those who had come to him at his place of business on a Saturday in the middle of June, 1950 with their children. He told us nothing of snapshots, taken for amusement of [fol. 2300] precocious children. He told us of an order for three dozen passport photos for Julius and Ethel Rosenberg and their family, who told him that they were going to Europe, to France.

There was some suggestion about the absence of the negatives. You saw the photographs of Schneider's place. His place is right back of the courthouse. His specialty is

making chauffeur's photographs, photographs of police licenses, for engineers' licenses, the little things that cost three for a dollar; you go in and you get them; usually the photographer has an old box that serves as a camera; the pictures are never very good, but they serve the purpose, and I doubt that they ever have a repeat order, and the negatives never survive the day; and that is the only reason why there are no negatives here. This wasn't artistic photography, requiring long and patient sitting with retakes. They were passport pictures, usual rate, three for a dollar. This order, the largest he probably had in a long time, nine dollars in one day, on a Saturday when he wasn't doing business.

There you have the contrast between the disinterested, truthful witnesses and the Rosenbergs, with a positive motive for deception and lying.

[fol. 2300a]As, of course, is the invariable procedure in cases of this kind, counsel for the Rosenbergs and Sobell had bitterly attacked many of the Government's witnesses. Some of these witnesses were involved with these defendants in this conspiracy; some were involved with these defendants in communist activities.

[fol. 2301] But it is these very witnesses whom they now attack that they themselves chose as their partners in crime. While Rosenberg attacks the Greenglasses today, seven years ago it was the Rosenbergs who took this same David Greenglass and set him to betraying his country. It was Sobell at Rosenberg's instigation who recruited Elitcher. The only ones with knowledge about the activities of these defendants are those who participated in the same activities. These witnesses were not your choice, nor were they mine, these witnesses, Elitcher and the Greenglasses. They were selected by these defendants as their associates and partners in crime.

As you have seen and heard, we have not only the testimony of Ruth and David Greenglass about Rosenberg's espionage activities. We have Elitcher's, a man who never saw Ruth and David Greenglass or Harry Gold. Elitcher has placed the brand of Soviet spy on Rosenberg. You have the documentary evidence of Gold's registration card, the bank account, the wrapping paper, the testimony of Dr.

Bernhardt, Dorothy Abel, Evelyn Cox, of Schneider, who took the passport pictures. That is why the evidence as to the Rosenbergs' guilt is incontrovertible.

Their guilt is established by the proof not beyond a reasonable doubt, but beyond any conceivable doubt.

[fol. 2302] As his Honor will undoubtedly charge you as to the defendant Morton Sobell, that once the proof has been shown that he was a member of this enterprise, then he becomes bound by the acts of his co-conspirators—of Julius Rosenberg and Ethel Rosenberg and the others—even though he may not personally have participated in each of these acts. That is so because they were all members of the team. The one common purpose which bound them in all their activities was to aid the Soviet Union.

What is the evidence of Sobell's participation here? The evidence is that Sobell had been an associate of Rosenberg since City College days. They were joined by the common bond of communism and devotion to the Soviet Union. The evidence is that Sobell acted with Rosenberg in this conspiracy to commit espionage for the Soviet Union by delivering material to Rosenberg and by fulfilling Rosenberg's orders to recruit Max Elitcher and others into this Soviet espionage ring.

The testimony is that in the same month that Greenglass was paid by the Russians through Rosenberg to flee the country to Mexico, and in the same month that the Rosenberg family got its passport photograph, in that very month Sobell and his family did in fact flee to Mexico where [fol. 2303] Sobell went to the airport of Vera Cruz, just as Greenglass had been instructed to do, and to the second airport at Tampico, and he went there under not one but under a string of aliases, using people in New York and in New Mexico as mail drops, exhibiting the conduct that fits in the pattern of only one thing—membership in this conspiracy to commit espionage for the Soviet Union and flight from an American jury when the day of reckoning had come.

You have had in evidence before you Exhibits 22-A and 23-A, which are registration cards for Sobell under fictitious names in Vera Cruz and in Tampico. Aside from the fictitious names which I purposely refrain from calling

to your attention, you will now notice that on each of the cards he gave a different address, equally fictitious, in Philadelphia. If he was not running away from anything why did he have to go under a false name and give a false address in Philadelphia?

First you have the testimony of Elitcher as to Sobell. Mr. Kuntz had a lot to say about Elitcher. Once again Elitcher was picked by Sobell. He wasn't picked by me or by you. He was his best friend. Elitcher knows the truth about Sobell's participation in this conspiracy to commit espionage because Sobell tried to pull Elitcher into these espionage activities along with him. Elitcher is one of [fol. 2304] the few who knows the true nature of Sobell's activities and he has told us of them. The others who know are the Rosenbergs. One can see the chance of having them tell us about it. The cost of the truth and his testimony to Elitcher was the ruination of his reputation. He lost his job. He has admitted he had been a Communist and that he had been recruited into this Soviet espionage ring by Sobell and by Rosenberg. This argument about a possible perjury charge against Elitcher, just like the argument about Ruth Greenglass being out of jail, are invariable and inevitable arguments of counsel when they are overwhelmed and when the evidence is devastating against their client, to attempt to confuse an issue, build up straw men. They know as well as we do that the conclusion of the grand jury as to the other defendants and other cases is the prerogative of the grand jury and is foreign to the single issue in this case, as foreign as what I have suggested before, as the diversionary attack, for instance, on the prosecutor.

These defendants seek to escape the consequences of their own acts by hiding behind straw men like that. Greenglass is a confessed spy and Elitcher has admitted that some years ago he did not disclose his Communist Party membership in an application; but these men under the [fol. 2305] greatest stress have stood up here and disclosed the truth about their past activities—the truth established beyond any doubt by independent, uncontradicted and corroborated evidence. Unlike the defendants on trial, these witnesses have come forward and told the truth.

They have not compounded their sins by trying to lie to you here in this courtroom. The question here is not the fate, present or future, of other people. The question here is the guilt of these three defendants named by the grand jury here on trial before you in this courtroom. That is the single issue and the evidence on that issue is overwhelming.

In the face of the testimony of the Greenglasses, of Gold, of Elitcher, and the documentary proof and testimony of disinterested witnesses, all corroborated, all that the defense has offered is the testimony of Ethel and Julius Rosenberg, who plainly have the greatest motive in the world for lying, and just as plainly lied throughout before you.

Concerning Morton Sobell, it was Sobell at college along with Rosenberg who recruited Elitcher into the Young Communist League. When Sobell joined Elitcher in Washington when both worked for the Ordnance Branch of the Navy Department, it was Sobell again who recruited Elitcher into the Communist Party, it was Sobell who was [fol. 2306] chairman of the Communist Party cell. It was Sobell who was chairman of the cell, who imparted orders from the Communist Party to the Government employees who belonged to the cell, the doctrine of worship and service of the Soviet Union. This testimony is uncontradicted. Elitcher was unaware of all the details of friendship through the years between Rosenberg and Sobell. Elitcher does not know the details of the relationship between Rosenberg and Sobell except as it affected him personally, but we know of that relationship from the mouth of Rosenberg himself, who admitted his association with Sobell. It would require but little mental effort on the part of any of us to figure out how Rosenberg happened to approach Elitcher to invite him into Soviet espionage in June, 1944. Sobell, Rosenberg's friend, was the one who had recruited Elitcher into the Communist Party. It was Sobell who thought that Elitcher was right for recruitment into Soviet espionage. It was Sobell who knew Elitcher was in the very status that Sobell described to Elitcher in later years, as in the perfect position for enlistment into Soviet espionage. That was why Sobell's friend, Rosenberg, in 1944 went to Washington to see Max Elitcher,

a classmate he hardly knew at school, and whom he had seen for exactly 30 seconds or one minute in six years at a swimming pool since they left school. It requires hardly [fol. 2306a] any imagination to find that Sobell sent Rosenberg to see Elitcher on that occasion, but even this little effort need not be extended.

On that visit in June 1944 you will remember Rosenberg told Elitcher that Morton Sobell was "in this thing" with Rosenberg. This is the visit which Rosenberg says resulted from his thumbing through the telephone directory when he was in Washington.

[fol. 2307] Sobell at the time was in Schenectady working at the General Electric Company on secret Government projects. The next time——

The Court: Mr. Saypol, 10 minutes.

The Saypol: Will you allow me to take two or three more?

The Court: Go ahead.

Mr. Saypol: I will try to rush it.

It was then that Elitcher told Sobell of Rosenberg's visit and of Rosenberg's attempt to assure Elitcher to enter the espionage ring by disclosing that their good mutual friend, Morton Sobell, was already in it with Rosenberg. It was on this occasion that Sobell was vexed to know that Rosenberg had revealed to Elitcher that Sobell was engaged in Soviet espionage. He retorted that Rosenberg should have more sense than to go around talking about that.

What did Sobell do on being told by Elitcher that their friend Rosenberg had named Sobell as a member of the Soviet espionage ring? Did he denounce the revelation as a lie and deny his participation? No, he didn't deny the truth to hs friend. His only reaction was that there was too much loose talk about his being a member of the espionage ring. He objected to the notoriety about that activity in this country.

[fol. 2308] You, of course, remember the testimony how Sobell joined Rosenberg in efforts to establish Elitcher as an active and useful source of information to the Soviet espionage ring; how on Elitcher's visits to Schenectady Sobell pumped him for information concerning the new secret program of the Government for gun-fire control on our war weapons; how when he drew from Elitcher the ad-

mission that this secret program would be described in writing in the near future, Sobell instructed Elitcher to go at once to Rosenberg and tell him that his material was in preparation and might be available; how Elitcher in fact did go to Rosenberg and tell him that.

You will remember how one of the top projects on Rosenberg's list was the problem of recruiting more communists and people whose ideology was such that they were ripe for invitation to enter Soviet espionage.

So, too, Sobell on at least two occasions pressed Elitcher for names of engineers, not for business but engineers with the proper progressive views who would be good prospects. Of course, they had to be in the first instance identified with communism. Later on, when the chance of detection became more likely, he said it was important that they should not have been identified with any communistic activities. [fol. 2309] There came a time when Elitcher decided to leave the Bureau of Ordnance in Washington—apparently when Sobell and Rosenberg had made a request of Elitcher which necessitated his remaining in Government. When Elitcher called Sobell and told him of his decision, he had to meet Rosenberg and talk to him about it first, and they tried to dissuade him. You will remember the meeting which resulted in dinner at Manny Wolf's.

Elitcher did, and finally changed his mind, on July 30, 1948, and came to New York. He stayed at Sobell's house. He disclosed to Sobell that they had been followed from Washington. Sobell was alarmed—alarmed because, in his words, he had some very valuable material, so much so that that night they had to go down to 10 Monroe Street to deliver it to Rosenberg even at the risk of detection by the FBI. And that, you will remember, was the same day that the Bentley story came out, and that was the day when there was some mention by Rosenberg of the fact that he had some relations in espionage with Miss Bentley.

When William Danziger, a classmate of Rosenberg and Sobell, went to see Sobell in the late spring of 1950, last year, and told Sobell what business he was in, Sobell furnished Danziger with the business address of Sobell's friend, Julius Rosenberg, and suggested that Danziger go [fol. 2310] to see him. Danziger did go to see Rosenberg.

He spoke with him. He told him that he had come from Sobell. He saw Rosenberg again before his arrest. He wanted to give Rosenberg some business but Rosenberg wouldn't take it, telling Danziger that he was too busy. This was significant, because Rosenberg on this witness stand has made protestations of poverty and told us how bad business was and how he could not eke out an existence, no less lend money to David Greenglass. But Rosenberg was too busy to accept an order from Danziger.

We know why he was busy—too busy trying to keep two steps ahead of the FBI; financing flight of other members of the ring and making his own plans to flee.

You have heard the details, the instructions of Greenglass to get to Mexico and out of Mexico, and finally behind the Iron Curtain—the statues, the three-day waits, the signals and so on.

Just after Greenglass's arrest in June of 1950, Sobell fled. He was running away from the authorities and the United States. He told such a story to this man Rios from Mexico in a slightly different way, that he had seen one war when in fact you know from his draft documents he was never in the Army. He was afraid of the draft, [fol. 2311] and yet he was too old now—he was over 26—to be drafted again.

He did tell Rios that he was fleeing but he did not tell him the real reason. And the other facts, the concealment of names and the concealment of addresses are enough to indicate the real reason for flight.

You have heard from Danziger, how Sobell used him as a mail drop, sending letters here for ultimate transmission to members of his family. You have heard that from Mr. Rios, how letters came to him from Sobell in Tampico and Vera Cruz. When he opened the mail, it was intended for Sobell's wife.

The FBI caught up with him and brought him back, and you have him here.

You cannot determine the guilt of Sobell any more than you can of the other defendants by any ingenious arguments of counsel.

The uncontradicted evidence of Sobell's espionage activities, of his meetings with Elitcher, of the trip to deliver the

can of film to Rosenberg, of the flight to Mexico using at least five different aliases, combine to make the uncontradicted proof of Sobell's guilt overwhelming.

Ladies and gentlemen, you have heard statements of defense counsel here concerning the injection of communism [fol. 2312] in this case. I repeat again, these defendants are not on trial for being communists. I don't want you to convict them merely because of their communist activity.

Communism, as the testimony has demonstrated, has a very definite place in this case because it is the communist ideology which teaches worship and devotion to the Soviet Union over our own government. It has provided the motive and inspiration for these people to do the terrible things which have been proven against them. It is this adherence and devotion which makes clear their intent and motivation in carrying out this conspiracy to commit espionage.

We ask you to sustain the charge of the grand jury in a verdict of guilty against each of these three defendants, on one basis and one basis alone: the evidence produced in this courtroom as to their guilt of the crime of conspiracy to commit espionage; that proof as to each defendant has been overwhelming. The guilt of each one has been established beyond any peradventure of doubt.

The crime charged here is one of the most serious that could be committed against the United States of America. These defendants before you are parties to an agreement to spy and steal from their own country, to serve the interests of a foreign power which today seeks to wipe [fol. 2313] us off the face of the earth. It would use the produce of these defendants, the information received through them, from these traitors, to destroy Americans and the people of the United Nations.

These three defendants stand before you in the face of overwhelming proof of this terrible disloyalty, proof which transcends any emotional consideration which must eliminate any consideration of sympathy.

No defendants ever stood before the bar of American justice less deserving of sympathy than these three.

I am a firm believer in the American jury system. I have confidence in the perception of a jury of 12 intelligent American citizens.

I am confident that you will render the only verdict possible on the evidence presented before you in this courtroom—that of guilty as charged by the grand jury as to each of these three defendants.

The Court: We will take a short recess.

(Short recess.)

The Clerk: The Court is about to charge the jury. All persons wishing to leave the courtroom should do so now, as no one will be permitted to leave until the Court has finished his charge.

[fol. 2314] DEFENDANTS' REQUESTS TO CHARGE

1. I charge you that you, and you alone, are the sole judges of the facts in this case, and it is your duty under your oaths as jurors to fulfill this duty in arriving at your verdict in this case. You are not to be influenced in this case, so far as the facts are concerned, by anything except the evidence adduced in the course of the trial. I particularly caution you that anything said by the Court in his instructions is said to you for the purpose only of giving you instructions as to the law in the case. If you should be under the impression after hearing these instructions as to the law, that the Court has indicated the weight or purport of certain facts in evidence then you are not to follow the impression thus conveyed and you need pay no attention thereto, unless and only if it agrees with your own independent judgment based upon the evidence in this case.

2. I charge you that the action of the Court during the course of this trial in passing upon or in overruling objections made on behalf of the defendants, or in sustaining objections made by the prosecution are not to be taken by you as any indication of the guilt or innocence of the defendants. Counsel for the defendants not only has the right, but is charged with the positive duty of objecting [fol. 2315] to the introduction into evidence of any testimony or exhibit offered by the prosecution which such counsel for the defendants believes, under the rules of evidence, should not be admitted. Such matters are merely matters of procedure with which you have no concern and

which should not influence you in arriving at your verdict.

3. I charge you that the indictment on file herein is a mere charge or accusation against the defendants. It is merely the means of bringing the defendants to trial. It is not any evidence of the defendants' guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendants because of or on account of such indictment.

4. I charge you that, as a matter of law, the Government occupies no different or higher position than any other litigant. I charge you, therefore, that you must not be influenced in your consideration of the evidence in this case by the fact that the Government of the United States is a party to this action. The Government is to be considered as any other party and its counsel is to be considered as any other counsel for any party.

5. I charge you that the defendants' plea of not guilty [fol. 2316] to the indictment puts in issue every material allegation of fact contained in the indictment and that throughout the trial the defendants' denial of the evidence offered against them by the prosecution puts the burden upon the Government to prove the defendants' guilt on each and every essential element of the crime beyond a reasonable doubt.

6. The defendants on trial in this case are presumed to be innocent of the crime with which they are charged. This presumption of innocence has the weight and effect of evidence in their behalf. This presumption of innocence with which the defendants are at all times clothed is not a mere form to be disregarded by you at pleasure, but it is an essential, substantial part of the law and binding upon you in this case to give the defendants the full benefit of this presumption. This presumption of innocence outweighs and overbalances all conjectures, innuendos, suspicions and suppositions.

7. In your consideration of all matters of fact, and in your weighing of the evidence, you have no right to assume the guilt of a defendant, and then try to reconcile the testimony with such assumption; but it is your sworn duty to presume the innocence of the defendants and to give them the benefit of such presumption all through the trial and at

every stage of the investigation of the evidence in the [fol. 2317] jury room, until it is overcome, if it ever is overcome, by proof.

8. I charge you that the defendants are not obliged to prove that they are innocent of the charge made against them; on the contrary, the burden of proving their guilt is upon the prosecution. The prosecution must prove each fact and circumstance essential to the guilt of the defendants. This burden which the prosecution has never shifts but always remains with the prosecution throughout the trial. If the prosecution has failed to satisfy you of the truth of each and every fact material and essential to the guilt of the defendants, it is your duty to bring in a verdict of not guilty.

9. I charge you that the defendants cannot be found guilty of an offense under the statute upon which this indictment is found unless every element of the offense as described and defined in the statute is proved by the Government beyond a reasonable doubt.

10. I charge you that to sustain a conviction of conspiracy to commit espionage, the Government must prove the essential elements of that crime by substantial evidence which excludes every other hypothesis but that of guilt.

11. I charge you that it is not enough to convict the [fol. 2318] defendants that the evidence on behalf of the Government is credible and raises a probability or his or her guilt.

12. I charge you that it is not enough to convict the defendants of conspiracy to commit espionage unless all the elements of the crime are proved by the Government beyond a reasonable doubt.

13. I charge you that in order to overcome the presumption of innocence, the evidence must not only be consistent with the theory of guilt beyond a reasonable doubt, but must be inconsistent with, and must exclude, every reasonable theory of innocence; and as long as you are able to reconcile the evidence with any reasonable theory of innocence of the defendants, the law makes it your duty to do so; and if, upon a full consideration of all of the evidence in the case, you still feel that there is a reasonable possibility of the innocence of the defendants, then you must find them not guilty of the crime charged.

14. I charge you that circumstantial evidence is not direct proof of a fact. It is evidence which tends to prove a disputed fact by proof of other facts which have a tendency to lead the mind to infer that the fact sought to be established is true.

15. I charge you that the law does not require a defendant [fol. 2319] to take the witness stand and testify in his own behalf. The failure, therefore, of any defendant to take the witness stand and so testify does not create any presumption against him or any other defendant. I further charge you that you must not permit such fact to weigh in the slightest degree against any such defendant or any of his co defendants, nor should this fact enter into your discussions or deliberations in any manner.

16. I charge you that the prosecution and the defendants are entitled to the individual opinion of each juror on the issue of fact in this case. It is the duty of each of you to consider and weigh all the evidence in the case, and from such evidence to determine, if you can, the question of guilt or innocence of the defendants. When you have so determined that question, you should not be influenced in giving your verdict by the mere fact that any number or all of your fellow jurors may have reached a different conclusion. If, after careful consideration, your mind is made up, and you are convinced that you are right, it will be your duty to stand by your decision and not to abandon or surrender that decision, if it represents your conscientious conclusion.

[fol. 2320] 17. While it is your duty to confer and deliberate with each other before arriving at a verdict, nevertheless, the verdict which you render must represent the real judgment and honest conclusion of such of you, after such deliberation conscientiously reaches a decision on the facts, you have no right to surrender your decisions to the opinion of other jurors, or a majority of them for the purpose of preventing a disagreement or for the purpose of arriving at a compromise.

18. I charge you that in evaluating the evidence and coming to your determination you are to treat this case no differently from the way you would treat any defendant charged with a crime in any other criminal case; that you

should arrive at your verdict solely upon the evidence and the law applicable to the charge and the facts as given to you by the Court.

19. I charge you that the Government of the United States is one of the parties or litigants in this case and it is to be accorded no preferential treatment over any other party or litigant.

20. I charge you that no inference is to be drawn against any defendant who has properly exercised his constitutional privilege against testifying as to any matters which may tend to incriminate him or her.

[fol. 2321] 21. I charge you that you are to subject the testimony of all witnesses called on behalf of the prosecution, with the exception of accomplice testimony, to the same scrutiny and the same standards as you would the testimony of witnesses called on behalf of the defendants in determining the truth or falsity of such testimony.

22. I charge you that any accounts of the proceedings in this case in newspapers, radio, or other media of communication are not to be considered by you in weighing the evidence in this case or in arriving at your verdict; but, on the contrary, you are to disregard any such accounts and decide the issues in this case solely on the evidence presented in the court proceeding.

23. I charge you that each defendant is entitled to a consideration of the evidence in this case as it applies to him or her individually with respect to his or her individual guilt or innocence, and your verdict must be based purely on the evidence received against him or her.

24. I charge you that your verdict must be arrived at without any influence of bias, prejudice, passion, patriotism, or any other matter not related to the evidence adduced at the trial of this case.

25. I charge you that if, after giving due consideration [fol. 2322] to the fact that you may be in disagreement with the opinions of some of your fellow jurors who have reached a conclusion opposite to yours, you still entertained a reasonable doubt as to the guilt of these defendants or any of them, it is your right and your duty to hold fast to your conscientious determination, even though the trial would result in a disagreement.

26. I charge you that you owe allegiance to no one in this case in arriving at your verdict except to your own judgment and conscience.

27. I charge you that the race, color, religion, creed, or position in society of these defendants are not to enter into your deliberations in arriving at your verdict, and I charge you further that these defendants are entitled to equal treatment under our law.

28. I charge you that Communism, the possibility of the defendants' belief in Communism, or the possibility or probability of the defendants' membership in the Communist Party or any other organization is not an issue at this trial and is not to be considered by you or to influence you in any way in relation to any consideration of the crime charged.

29. I charge you that Communism, the possibility of the defendants' belief in Communism, or the possibility or probability of the defendants' membership in the [fol. 2323] Communist Party is not to be considered by you as evidence of the defendants' guilt of the crime charged.

30. I charge you that the possibility or probability of the defendants' membership in the Communist Party is not to be considered as evidencing a scheme or plan to commit the crime charged.

31. I charge you that the possibility or probability of the defendants' membership in the Communist Party is not to be considered as evidencing or throwing light upon the defendants' intent to commit or motive in committing the crime charged.

32. I charge you that the defendants are not on trial for being members of the Communist Party.

33. I instruct you that the persons mentioned by the Government in the indictment herein as alleged co-conspirators, Ruth Greenglass and Harry Gold, are to be treated as accomplices; and this likewise applies to the co-defendants, David Greenglass and Anatoli A. Yakovlev.

34. I charge you that an accomplice in this case is anybody that the prosecution charges agreed or confederated with any or all of the defendants in the commission of the crime charged, as alleged in the indictment.

35. I charge you that you should consider the testimony

[fol. 2324] of accomplices with care and caution, and scrutinize their testimony with the utmost circumspection.

36. I charge you that you should consider the testimony of accomplices with suspicion.

37. I charge you that in testing the credibility of any witness' testimony you may consider that the witness is a self-confessed perjurer.

38. I charge you that if you find that any witness is a self-confessed perjurer you may consider his testimony with care, caution, and suspicion.

39. I charge you that if you find that any witness is a self-confessed perjurer you should consider his testimony with care, caution, and suspicion.

40. I charge you that in determining the credibility of any witness you may take into consideration the motive of the witness so testifying.

41. I charge you that in determining the credibility of any witness you may take into consideration the self-interest of the witness so testifying.

42. I charge you that no inference is to be drawn against the defendants, Julius Rosenberg and Ethel Rosenberg, because of the incidents relating to Morton Sobell's (co-defendant) journey to and trips in Mexico.

[fol. 2324] The defendants reserve and ask leave of the Court to reserve to them the right to ask the Court for additional proposed instructions to the jury.

The Clerk: The Court is about to charge the jury. All persons wishing to leave the courtroom should do so now, as no one will be permitted to leave until the Court has finished his charge.

[fol. 2325] CHARGE OF THE COURT

(I. R. Kaufman, J.)

Madam and gentlemen of the jury:

I should like to extend to you my appreciation for your attentiveness during the course of this trial, and I want to particularly express my gratitude for the sacrifice which

you have made in neglecting your businesses and your personal affairs so that justice could be meted out.

It has been a long day, it has been a trying day for all of us, and I again want to say that I appreciate your attentiveness, your promptness during every session of this trial, your promptness this morning when we convened one hour earlier than usual, your promptness after the lunch period which was a shortened lunch period, and the interest which you have shown in this entire proceeding.

Your service as jurors in this case is the best recognition of each and every one of you of your duties as citizens.

In my selection of the jury I spoke of justice. I said that justice cannot flourish under our American system of jurisprudence unless all of us—you and I—are ready to make some sacrifices to attain the desired end. You cannot have [fol. 2326] justice unless you are ready to approach your task of determining the issues with your minds completely barren of prejudice or sympathy. Just as the defense is entitled to a determination based on the evidence without the injection of bias in the process of decision, so is the Government entitled to your deliberation free from the injection of sympathy or fear of duty or some other equally improper consideration.

I think you have been duly impressed with the fact that you perform a very important function in the administration of justice; but while you sit as jurors you are not just the average layman or the average man or woman who is taking part in some business discussion. You are under oath as jurors. You are sworn officials in that respect, charged with certain duties and obligations in the administration of justice. You have taken an oath to render a true verdict on the evidence, and in your selection I endeavored, by the questions that were presented to you, to be certain of the fact that the litigants before the court would receive a fair and impartial trial.

Now, as you approach the performance of one of the most sacred duties of citizenship, the meting out of justice, I must remind you again that it is your duty to weigh the [fol. 2327] evidence in this case calmly and dispassionately, without sympathy or prejudice, for or against either the Government or the defendants. The rich and the poor,

the persons of every race, creed and condition stand alike before the bar of justice.

The very importance of the case makes it all the more urgent that you heed these words of caution. In this connection you will bear in mind at all times that these three defendants are charged here as three individuals, and that the guilt or innocence of each must be passed on by you separately, pursuant to and in accordance with the instructions which I am about to give you.

The first thing I want to make plain to you is the way in which our American system of jurisprudence defines the duties of the judge on the one hand, and those of the jury on the other. It is exclusively my function clearly to set forth the rules of law which govern the case, with instructions as to their application. On these legal matters you must take the law as I give it to you; you are not at liberty to do otherwise. Thus I shall have the indictment read to you and the statute applicable to the case. You are not supposed to be lawyers; you are not supposed to be informed on the provisions of the statute or the principles [fol. 2328] of law that may apply to the proper consideration of the evidence in the case, but you are the sole triers of the facts. It is not what counsel may say a witness testified to or what counsel may say a document contained or showed, nor even what the Court might say. It is what you, the jurors, decide. And I might say at this point that counsel for both sides are to be given equal consideration—both occupy the same position before the Court.

There are twelve of you jurors, who will ultimately receive this case. If there is any question in your mind, if you have any division as to what a witness may have testified to concerning some particular incident, if you get to such a point, if you can't depend on your recollection of the facts, if you think it is vital, it is necessary that you have the testimony read back to you pertaining to this particular incident, you have the right to have your recollection refreshed by requesting that that part of the witness' testimony be read to you here in the courtroom, and the stenographer will do so.

As you deliberate, please be careful to listen to the opinions of other jurors, as well as to ask for an oppor-

tunity to express your own views, if you have views you care to express. No one juror holds the center of the [fol. 2329] stage in the jury room and controls or monopolizes the deliberations. You all have a chance to express your views; exchange views; and don't be afraid to change your view because of pride of opinion, if you are convinced that your original view is wrong. It would be silly for you to sit in a corner and sulk because someone else does not agree with you. Talk it out. That at what deliberation means.

You will endeavor to arrive at a verdict providing that this can be done reasonably and consistently with the conscientious convictions of each one of you jurors. It is important to both the Government and the defendants that the case be determined. You understand, of course, that under our system of law in a criminal case, any verdict of a jury must be a unanimous verdict. A ten to two verdict, or a nine to three verdict, is not any good. The verdict of the jury is the verdict of the jury as a collective body and of every member of the jury.

Justice in your hands is like a child in the hands of its parents. Just as a child will be warped in a home of bickering and wrangling—so will justice be thwarted in a jury room of heat, bickering and wrangling. Just as the child can be guided by discussion and reasoning so can you mete out justice by discussion and reasoning among your- [fol. 2330] selves. I repeat a phrase so commonly used by my brethren of the bench—The more heat of argument in the jury room, the less light.

So much for what your functions are and how you are to go about your work in the jury room.

As I instructed you when the jury was chosen, the defendants are accused of violating the statute which reads in part as follows:

> "If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished according to law."

Now, it is alleged in the indictment that the defendants conspired to violate section 32, which has been referred to in the law I have just read. Section 32 provides in part that

> "Whoever, with intent or reason to believe that it is to be used . . . to the advantage of a foreign nation, communicates, delivers or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, . . . or to any representative, officer, agent, employee, subject, or [fol. 2331] citizen thereof, either directly or indirectly, any document, writing . . . sketch, . . . note, . . . or information relating to the national defense, shall be punished according to law."

Now, what is the charge contained in the indictment?

If Mr. Schaefer will be good enough to read the indictment, we will hear what that charge is.

The Clerk: Yes, your Honor.

(Reading:

"The Grand Jury charges:

"1. On or about June 6, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as 'John', David Greenglass and Morton Sobell, the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold and Ruth Greenglass, named as co-conspirators but not as defendants, and with diverse other persons presently to the Grand Jury unknown, to violate subsection (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and [fol. 2332] reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, the Union of Soviet Socialist Republics and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and informa-

tion relating to the National Defense of the United States of America.

"Over-Acts

"1. In Pursuance of said conspiracy and to effect the objects thereof, in the District of Columbia, on or about June 6, 1944, the defendant Julius Rosenberg visited a building at 247 Delaware Avenue, Washington, D.C.

"2. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 15, 1944, the defendants Julius Rosenberg and Ethel Rosenberg conferred with Ruth Greenglass.

"3. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, the defendant Julius Rosenberg gave Ruth Greenglass a sum of money.

"4. And further in pursuance of said conspiracy and to [fol. 2333] effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, Ruth Greenglass boarded a train for New Mexico.

"5. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius Rosenberg went to 266 Stanton Street, New York City.

"6. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant, Julius Rosenberg, received from Ruth Greenglass a paper containing written information.

"7. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendants Julius Rosenberg and Ethel Rosenberg conferred with the defendant David Greenglass and Ruth Greenglass.

"8. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendant Julius Rosenberg gave Ruth Greenglass a portion of the side of a torn cardboard 'Jello' box.

[fol. 2334] "9. And further in pursuance of said con-

spiracy and to effect the objects thereof, in the Southern District of New York, on or about January 10, 1945, the defendant Julius Rosenberg introduced the defendant David Greenglass to a man on First Avenue, New York City.

"10. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg conferred with the defendant David Greenglass.

"11. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg received from the defendant David Greenglass a paper containing sketches of experiments conducted at the Los Alamos Project.

"12. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 14, 1945, the defendant David Greenglass boarded a train for New Mexico.

(Section 34, Title 50, United States Code.")

[fol. 2335] The Court: Thank you, Mr. Schaefer.

The Clerk: You are welcome, your Honor.

The Court: As I told you when you were being selected, this indictment that has just been read to you is merely a method by which the prosecution calls into a court of justice individuals who, it is claimed, violated the law. It is not evidence of the guilt of the defendants nor does it detract in any degree from the presumption of innocence with which the law surrounds them until their guilt is proven.

This presumption of innocence remains with them throughout the trial of the case and applies to the consideration of each of the essential ingredients going to make up the crime charged unless and until you, the jury are satisfied beyond a reasonable doubt, from the evidence adduced by the prosecution, on whom is the burden of proof, of the guilt of the defendants as charged.

You may well ask what is meant by the expression "beyond a reasonable doubt". I believe the words themselves give the answer. It is such a doubt as is based on reason,

that is, a doubt which a reasonable man might entertain. It is not a fanciful doubt; it is not an imagined doubt; is it not a doubt that a juror might conjure up in order to avoid performing an unpleasant duty. Let me repeat, [fol. 2336] it is a reasonable doubt, that is a doubt which arises in a juror's mind because of something in the evidence in the case, or the absence of evidence in the case. The burden, therefore, is on the Government to establish the guilt of the defendants beyond a reasonable doubt.

Now, it is not necessary for the Government to prove the guilt of the defendants beyond a possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason would be that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proof that the defendants are guilty be established beyond a reasonable doubt, not beyond all possible doubt.

Circumstantial evidence is entitled to such consideration as you may find it deserves depending upon the inferences you think it necessary and reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the jury must be convinced beyond a reasonable doubt of the guilt of the defendants. Circumstantial evi- [fol. 2337-2337a] dence consists of facts proved from which the jury may infer by process of reasoning other facts sought to be established as true.

Different inferences, however, may be drawn from the facts and circumstances in the case, whether proved by direct or circumstantial evidence. The prosecution asks you to draw one set of inferences while the defendants ask you to draw another. It is for you to decide and for you alone, which inferences you will draw. If all the circumstances taken together are consistent with any reasonable hypothesis which includes the innocence of the defendants, or any of them, the prosecution has not proved their guilt beyond a reasonable doubt, and you must acquit them. On the other hand, if you find that all of the circumstances

established by the evidence in this case, taken together, satisfy you beyond a reasonable doubt of the guilt of the defendants, in accordance with these instructions, it is your duty to find the defendants guilty.

The defendants are accused of having conspired to commit espionage. Espionage, reduced to essentials, means spying on the United States to aid a foreign power. Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, the enforcement of the espionage laws takes on a new significance. Our national well-being requires that we guard against spying on the secrets of our defense, whether such spying is carried on through agents of foreign powers or through our own nationals who prefer to help a foreign power.

[fol. 2338] This does not mean that the mere allegation or use of the word "espionage" should justify convicting innocent persons; however, irrational sympathies must not shield proven traitors.

For two or more persons to conspire, confederate or combine together to commit or cause to be committed a breach of the criminal law of the United States is an offense of grave character which involves a plotting to subvert the law. It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. Because of this the statute has made a conspiracy to commit a crime a distinct offense from the crime itself. From the point of view of the law there is danger to the public when two or more people conspire to do something that is unlawful because by virtue of the aggregation of numbers the intent assumes a more formidable disadvantageous aspect to the public.

What is a conspiracy? A conspiracy may be defined as a combination of two or more persons, by concerted action, to accomplish a criminal and unlawful purpose, or some purpose not in itself unlawful or criminal, by criminal or unlawful means. The gist of the offense is the unlawful combination or agreement to violate the law. As Mr. Justice Holmes said many years ago: "A conspiracy is a partner-
[fol. 2339] ship in criminal purposes."

However, it is not necessary in order to constitute a con-

spiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plan or means by which the unlawful scheme was to be made effective.

It is sufficient if two or more persons, in any manner, or through any contrivance, impliedly or tacitly, come to a mutual understanding to accomplish a common and unlawful design, knowing its object, and that one or more of them commit an overt act in furtherance of the conspiracy. In other words, where an unlawful end is sought to be effected and two or more persons, actuated by the common purpose of accomplishing that end, knowingly work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although his part therein be a subordinate one, or be executed at a remote distance from the other conspirators. All the conspirators need not have originally conceived the conspiracy, or participated in its conception. Those who [fol. 2340] come in later, with knowledge of the aims and purposes of the conspiracy, and cooperate in the common effort to attain the unlawful results become parties thereto. A conspiracy is not ended as long as the evidence shows an intention to continue it. Each alleged conspirator who was the agent of the others at some time during the life of the conspiracy remains an agent during all of its existence, except that a conspirator has the right to withdraw from the execution of the conspiracy, but it requires affirmative and effective action thus to withdraw and terminate his liability in the conspiracy. It is a principle of law that a condition once shown to exist continues, until a different situation is shown.

Persons may be guilty of being parties to a conspiracy though the objects of the conspiracy were never accomplished. On the other hand, proof concerning the accomplishment of the objects of a conspiracy is the most persuasive evidence of the existence of the conspiracy itself. Simplifying this perhaps a bit more, success of the venture, if you believe it was successful, is the best proof of the venture or the agreement. (In this case the Government

claims that the venture was successful as to the atom bomb secret.) The agreement is generally a matter of inference [fol. 2341] deduced from acts of the persons accused done in pursuance of an apparent criminal purpose.

You are further instructed that where several persons are proved to have combined together for the same illegal purpose, any act or declaration made by one of them during the pendency of the illegal enterprise, and in furtherance of the common objects, is not only evidence against himself but is evidence against the other conspirators who, when the combination is proved, are as much responsible for such declarations and acts as if made and committed by themselves, because each is deemed to assent to or command what is done by any other in furtherance of the common objects.

With these general principles as a guide you will approach the important question of whether the prosecution has proved beyond a reasonable doubt the existence of the conspiracy alleged in the indictment, and if such a conspiracy did exist, whether the defendants or any of them were parties to it and whether such defendants entered it with knowledge of its nature and purposes.

You must first determine from all the evidence in the case, relating to the period of time defined in the indictment, [fol. 2342] whether or not a conspiracy existed. If you decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he was a member of the conspiracy. He or she. In considering whether or not a particular defendant was a member of the conspiracy, you must do so I repeat that: In considering whether or not a particular defendant was a member of the conspiracy, as to that particular element, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership of a particular defendant from the evidence concerning his own actions, his or her own actions, his or her own conduct, his or her own declarations, or his or her own statements, and his or her own connection with the actions and conduct of others. However, once you have determined that a defendant was a member of the conspiracy, using this test, you may then consider as if made by him the statements and declarations of other co conspirators, made

in furtherance of the conspiracy and during the existence thereof as alleged.

As I have stated before, the indictment in effect charges conspiracy or agreement between the defendants now on trial and persons, such as David and Ruth Greenglass, Harry Gold and Anatoli A. Yakovlev, and others to the [fol. 2343] grand jurors unknown, to deliver to a foreign government, to wit, the Union of Soviet Socialist Republics, information relating to the national defense of the United States, with the intent that such information would be used to the advantage of the Union of Soviet Socialist Republics.

The indictment further enumerates twelve overt acts allegedly done to effect the object of the conspiracy. The overt act done to effect the object of a conspiracy need not be a criminal act. That is the law. And it is further the law that it is not necessary that each defendant or co-conspirator join in each overt act, or that each defendant or co-conspirator be named in an overt act. Furthermore, the Government has to prove beyond a reasonable doubt, only *one* of the aforementioned overt acts in furtherance of the conspiracy, in addition to proving the existence of the conspiracy and the membership of each defendant in the conspiracy beyond a reasonable doubt.

I want to explain and define several terms in the statute and in the indictment itself.

The charge is that of conspiring to transmit information relating to the national defense to the advantage *of a foreign nation* please note that I have said a "foreign nation." This means that there are some kinds of informa[fol. 2344] tion relating to the national defense which must not be given to a friendly power, not even to an ally. It has been said by a Justice of the Supreme Court,

> "No distinction is made between friend and enemy. Unhappily the status of a foreign government may change".

I charge you that whether the Union of Soviet Socialist Republics was an ally or friendly nation during the period of the alleged conspiracy is immaterial, and you are not to consider that at all in your deliberations.

I charge you further that the information which it was the object of the alleged conspiracy to transmit must have related to the national defense. The term "relating to national defense" is a "generic concept of broad connotations, relating to the military and naval establishments and the related activities of national preparedness." The term includes all matters directly and reasonably connected with the defense of our nation. The connection must not be a strained one or an arbitrary one. I charge you that the information, which the defendants are accused of conspiring to obtain, must be secret information relating to the national defense, that is, information which was not public at the time of the alleged conspiracy.

[fol. 2345] Furthermore the statute requires that the alleged conspirators have intended or have reason to believe that the information to be obtained was to be used to the advantage of a foreign nation. This requires those prosecuted to have acted in bad faith. The sanctions apply only when scienter or intent is established.

So you must find whether a conspiracy did exist and whether this conspiracy called for

(1) the transmitting of secret information

(2) relating to the national defense as I have defined it;

(3) to the Union of Soviet Socialist Republics or an agent thereof

(4) intending or with reason to believe that the information was to be used to the advantage of the Union of Soviet Socialist Republics.

I believe it is my duty as a Judge to help you crystallize in your minds the respective contentions and evidence in the case and I shall therefore review briefly these contentions of the prosecution and of the defendants.

The prosecution claims that the defendants on trial conspired together with each other, that is, Julius Rosenberg, Ethel Rosenberg, Morton Sobell and with others, [fol. 2346] such as Anatoli A. Yakovlev, David Greenglass, Ruth Greenglass, and Harry Gold, to communicate, deliver and transmit to the Union of Soviet Socialist Republics, and representatives and agents thereof, documents and information relating to the national defense of the United States,

with intent and reason to believe that it would be used to the advantage of the Union of Soviet Socialist Republics; that the representative of the Union of Soviet Socialist Republics for the purpose of receiving the secret information was Anatoli A. Yakovlev, who was a Vice-Consul for the Union of Soviet Socialist Republics at its legation in New York City and who left the country in December, 1946.

The prosecution further contends that Julius and Ethel Rosenberg, David and Ruth Greenglass, Morton Sobell and Harry Gold were part and parcel of this conspiracy to obtain banned information and to transmit it to Yakovlev, the Russian representative, and that clandestine and fraudulent devices were resorted to in obtaining this information.

The prosecution alleges that Morton Sobell was a friend of Julius Rosenberg and of Max Elitcher from their college days until recently. It is the prosecution's contention that Sobell was part of the conspiracy to transmit secret information to Russia and that he suggested Elitcher as a [fols. 2347-2347a] possible recruit to Julius Rosenberg.

The prosecution further contends that Julius Rosenberg visited Elitcher's home in Washington, D. C. in June, 1944 and asked him to get classified information from the Navy Department—that Russia needs help—and that Sobell was helping in the matter; that when Elitcher related the details of Rosenberg's visit to Sobell while on a camping trip in West Virginia State Park in 1944 Sobell became very angry at the reference to him by Rosenberg, but that Sobell did not deny that he was, as Rosenberg said, helping in the matter.

The prosecution further contends that Elitcher saw Julius Rosenberg in the summer of 1945 at Rosenberg's home in New York, and that at that time Julius Rosenberg said that he was up for dismissal from his Government job and that he was relieved that it was because of other activities and not because the Government had found out about his espionage activities (and that the Government contends Rosenberg was dismissed in fact); that Rosenberg visited Elitcher in Washington in September, 1945 and said there was a continuing need for getting material for Russia. The prosecution further contends that Sobell directly solicited Elitcher for classified information from the Navy Depart-

ment, in particular a fire-control report, while Sobell was working at the General Electric plant in Schenectady, New York, in 1946 and that Sobell asked Elitcher to see Julius Rosenberg about the espionage activities; that at the end of 1946, and this is the Government's contention, Elitcher visited Julius Rosenberg and told him he had seen Sobell, and Rosenberg said that Elitcher should discontinue his Communist Party activities and not see him because of leaks in espionage work.

[fol. 2348] The prosecution states further that Sobell and Elitcher met in 1947 in New York at which time Sobell was working at the Reeves Instrument Corporation, and Sobell asked Elitcher if he knew any progressive electrical engineers for espionage purposes; that Elitcher at that time related his troubles with his wife, and Sobell was concerned whether she knew about Elitcher's activities; that in 1948 Elitcher informed Sobell that he was leaving the Navy Department and Sobell asked him to speak to Julius Rosenberg—that the three met and Julius Rosenberg attempted to persuade Elitcher to stay in Washington, Rosenberg stating that they needed somebody to work in the Navy Department—and that Sobell acquiesced in this; they further contend that Julius Rosenberg related to Elitcher that he, Rosenberg, had gotten to a Russian in higher circles in order to do espionage.

Further the Government claims that Sobell delivered important information to Julius Rosenberg in July, 1948 at which time Elitcher and Sobell drove to Rosenberg's house because of Elitcher's having been followed to New York—and that Sobell returned from Elitcher's house and told Elitcher Julius Rosenberg said he was not worried about Elizabeth Bentley because he did not think she knew.

The prosecution further claims that it was also a part of [fol. 2349] this same conspiracy to obtain information regarding the atomic bomb project; that Yakovlev was the collector of this information for Russia and that Harry Gold was one of his couriers; that Harry Gold as courier collected the information regarding the atomic bomb from various persons in this country, including Dr. Klaus Fuchs and David Greenglass; that David and Ruth Greenglass were drawn into this conspiracy by Julius and Ethel Rosenberg's

urgings and their request for information regarding the atom bomb. They further contend that secret information regarding the atom bomb project was transmitted by the Greenglasses to Julius Rosenberg; that the information was typed from written reports by Ethel Rosenberg, microfilmed by Julius Rosenberg and then transmitted to the Russians.

The Government attempted to show the link with the Russians both by the testimony of the introduction by Julius Rosenberg of a Russian to David Greenglass in January 1945, at which time Greenglass testified he drove around for about 20 minutes and the Russian asked technical questions concerning the atom bomb—and also by the testimony as to the Jello box-side incident—that one-half of the Jello box-side was kept by Julius Rosenberg to be used as a recognition signal by the courier to be sent by Rosenberg to pick up [fol. 2350] secret information obtained by Greenglass at Los Alamos, and that Gold subsequently received the part of the box-side from Yakovlev and used it to obtain the information from Greenglass, and that at the same time Gold, in identifying himself to the Greenglasses said—words to the effect "I come from Julius," which the Greenglasses contend was a greeting that had been prearranged between the Rosenbergs and the Greenglasses.

The Government contends that you have a right to infer that there existed a link between Julius Rosenberg and Yakovlev in that Julius Rosenberg in some way transmitted the recognition signal, that is, the Jello box-side to Yakovlev.

Bear in mind—please listen to this, ladies and gentlemen—that the Government contends that the conspiracy was one to obtain not only atomic bomb information, but other secret and classified information; that the information including the report regarding fire-control equipment requested of Elitcher by Sobell or Rosenberg was classified; that the atomic bomb information transmitted by the Rosenbergs was classified as top secret; that based on Rosenberg's alleged statements to Greenglass, other secret information such as mathematical data on atomic energy for airplanes, information relating to a "sky platform" project [fol. 2351] and other information was obtained by Julius Rosenberg from scientist contacts in the country.

The Government alleges that Julius Rosenberg received a citation, a console table and a watch from the Russians for his espionage activities; that Ethel Rosenberg received a watch from the Russians; that Julius Rosenberg received various sums of money from the Russians which he gave to the Greenglasses; that he gave Ruth Greenglass $150. in November 1944 when she first went to New Mexico to see her husband, and in the spring of 1950 he gave David Greenglass $1000. and then $4000.; and I think there was some other amount, $800. or something like that, and that Harry Gold received an envelope containing $500. from Yakovlev which he gave to David Greenglass.

It is contended by the Government that the defendants intended to benefit Russia and that their membership in the Communist Party and adherence to its principles showed a preference for the Soviet form of government.

Now I wish to instruct you at this point that I have admitted testimony as to membership or activity in the Communist Party and also testimony to the effect that the Communist Party is dedicated to furthering the interests of the [fol. 2352] Union of Soviet Socialist Republics solely on the question of the defendants' intent or reason to believe that the alleged secret information to be transmitted would be used to the advantage of a foreign nation, in this case the Union of Soviet Socialist Republics, which is an element of the charge that the Government must prove beyond a reasonable doubt.

I wish to caution you most strenuously that proof of Communist Party membership or activity does not prove the offense charged in this indictment, but may be considered by you solely on the question of intent which is one element of the crime charged here. It will be up to you to determine whether you believe that testimony and, if so, the weight that you will give it on the question of intention.

It is obviously impossible to ascertain or prove directly what were the operations of the minds of the defendants. You cannot look into a person's mind and see what his intentions are or were. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case enables one to infer with a reasonable degree of accuracy what another's intentions were in

doing or not doing certain things. With a knowledge of [fol. 2353] definite acts you may draw definite logical conclusions. You are in your affairs continually called upon to decide from actions of others what their intentions or purposes are. And experience has taught you that frequently actions speak more clearly than spoken or written words. You must therefore rely in part on circumstantial evidence in determining the guilt or innocence of any of these defendants.

The prosecution does not claim that all of the conspirators were known to one another—rather it has offered testimony to show the furtiveness and secrecy employed by the alleged conspirators; that recognition signals such as the Jello box-side and the note referring to Paul Street were used; that notes on atomic energy information were burned by Rosenberg in a frying pan; that to the minute meetings were scheduled for the passing of information.

Finally, the prosecution says that when the conspiracy was uncovered by the arrest of Dr. Klaus Fuchs and later of Harry Gold in February and May of 1950 respectively, the defendants, fearful of being apprehended, attempted to flee and that their attempts to flee followed a pattern which also indicates a preconceived plan—that Morton Sobell did reach Mexico and assumed many aliases there while seeking means of exiting from the country, and that he was [fol. 2354] apprehended only after being delivered to the United States by the Mexican authorities; that Julius Rosenberg intended to flee the country and that he and Ethel Rosenberg and their children obtained passport photos from Mr. Schneider for that purpose, and that he also asked the Greenglasses to flee, and to further that purpose he gave David Greenglass $5000, and elaborate instructions whereby he could reach Czechoslovakia from Mexico, and that he also asked Dr. Bernhardt as to the required inoculations in order to go to Mexico.

As to any evidence of flight adduced by the Government in this case, I charge you: Evidence of flight does not create any presumption of guilt, although it is a legitimate ground for an inference of a guilty mind, if the jurors conclude that such inference is justified. Flight is a circumstance which the jury may consider as having a tendency to prove the

guilt of a defendant, as an indication of a consciousness of guilt. It should not be considered alone and by itself. It must be weighed with all of the surrounding circumstances, and of course, it should be considered together with all the other evidence in the case in determining the guilt or innocence of these defendants.

I charge you that no inference is to be drawn against the defendants Julius and Ethel Rosenberg because of the inci- [fol. 2355] dents relating to Morton Sobell's journey to and trips in Mexico except that you may consider whether such journey or trips show a preconceived plan as part of the conspiracy to be followed by the conspirators in attempting to escape the country.

Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point that out because the Government contends that Sobell was in the general conspiracy to obtain information of a secret nature. To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country.

If you do not believe the testimony of Max Elitcher as it pertains to Sobell, then you must acquit the defendant Sobell.

If you find that there was a conspiracy and that Morton Sobell was a member of the conspiracy, any statements or acts of any co-conspirators are binding upon him because the law is that once you have joined a conspiracy attempting to accomplish an unlawful objective, the acts of the co- [fol. 2356] conspirators done in furtherance of the same objective, even though the co-conspirators are unknown to you, are binding upon you.

Now, on the other hand, the defendants' version of this case is as different as night is from day. The two versions are not reconcilable. You must determine which one you will believe. The defendants Julius and Ethel Rosenberg categorically deny that they or any of them ever conspired among themselves or with anyone else to obtain secret in-

formation pertaining to the national defense of the United States, intending to transmit the information to the Union of Soviet Socialist Republics, to the advantage of that nation.

The defendants, Julius and Ethel Rosenberg, deny that they knew any Russians or transmitted anything at any time to the Russians. They deny that they ever asked Ruth Greenglass to obtain information relating to the Los Alamos project from her husband David Greenglass, or that they ever obtained any such information from the Greenglasses. They deny any knowledge of a Jello box incident, or of the pointing out of Ann Sidorovich as a future courier, or that they knew Harry Gold, Jacob Golos or Elizabeth Bentley, or that they received any presents from the Russians. They allege that the only console table they had was purchased [fol. 2357] from R. H. Macy was one for $21. in 1944 or 1945.

In relation to this point, I would like to call your attention to the testimony of Mrs. Cox, offered by the prosecution, which stated that Mrs. Rosenberg had told her in 1945 that the console table was a belated wedding gift from a friend of Mr. Rosenberg's. They admit that they have a portable typewriter and that Ethel types and does work for civic organizations, but allege that the typewriter has never been used to type reports on secret information for microfilming and transmission to Russia.

They admit further that they knew in February, 1945 that David Greenglass was contemplating stealing things from the Army but did not pursue the matter. They allege that David Greenglass seemed troubled and asked their help last spring, but that they did not know his reason, and that any testimony by the Greenglasses against them is due to the trouble that they had with the Greenglasses while in business together, or for some other unknown reason.

Julius Rosenberg denies that he introduced David Greenglass to a Russian or that he ever entertained any Russians. He denies that he gave any money to David Greenglass other than some inconsequential loan while in business [fol. 2358] together.

As to the incident in which he told Ruth Greenglass's sister to go into the bathroom, he says it was at Ruth's

request since she wanted to tell him that she was worried about her husband's taking things from his army base.

Julius Rosenberg admits that he inquired of Dr. Bernhardt regarding inoculations for a person going to Mexico but he states that it was at David Greenglass's request and that he did not know what the trouble was or why David Greenglass would want to go to Mexico.

The defendant further admits that he has been friendly with Morton Sobell since their college days and that the Sobells have visited at his home, but he denies that he at any time received any information relating to the national defense or any microfilm from Sobell.

Julius Rosenberg admits that he saw Elitcher socially in 1944 and in April 1945, but he denies that those visits were at Morton Sobell's request or that he, Rosenberg, solicited the obtaining nor did obtain any classified information from Elitcher.

He further denies that he and Sobell met with Elitcher to try to induce him to stay at his job with the Navy Department.

[fol. 2359] Ethel Rosenberg specifically denied having typed any information relating to the national defense for transmission to Russia, or that she engaged in any way in a conspiracy to transmit such information.

The defendant Morton Sobell has entered a plea of not guilty to the charge in this case. By doing so he has put in issue every material allegation in the indictment, and the Government must prove each and every material allegation of the charge beyond a reasonable doubt.

Counsel for Sobell contend that Sobell was not a member of the conspiracy, that Elitcher is a perjurer who should not be believed, and that the Government has failed to prove Sobell guilty beyond a reasonable doubt as required.

You have heard their summation and therefore I will not discuss their contentions further.

[fol. 2360] From this brief recital of the contentions advanced in behalf of the defendants you can see how completely irreconcilable are the versions of the facts presented by the prosecution on the one hand and the defendants on the other. And so this seems to be an appropriate time for me to amplify my statement made at the outset of these in-

structions, that you are the sole and exclusive judges of the facts.

No matter how careful a judge may be to avoid it, there is always the possibility that the jury or some particular juror may get an impression that the judge has some opinion with reference to the guilt or innocence of the defendants, or that he thinks that some particular phase of the case is more important than another, or that some particular witness is more credible than another or that a certain inference of fact should or should not be made and so on. If you have formed any such impression you must put it out of your mind and utterly disregard it. Nothing I have said during the trial nor in these instructions was intended to give any such impression; nor were any remarks or questions addressed to any of the witnesses or to counsel so intended. On the contrary, I have been scrupulously careful to avoid any comment which might even remotely suggest that I considered the subjects of the weight of testimony, the credibility of witnesses, the inferences to be [fol. 2361] drawn or the relative importance of one segment of the evidence as against another, or the determination of the guilt or innocence of the defendants, as coming within the orbit of any of my functions as the presiding Judge in this trial.

And so I tell you again, you are the sole and exclusive judges of the facts of this case; you, and you alone, will pass upon the credibility of all the witnesses, all in accordance with the instructions on that subject, which I shall give you later. Despite anything said by me or by counsel, your recollection of the testimony must prevail whenever your recollection differs from what I have said or what counsel for either side have said in argument or otherwise; it is for you to determine what the proofs adduced by both sides disclose, regardless of anything said by me in the brief and necessarily incomplete summaries which I have given you of the contentions of the parties; and it is for you and you alone to weigh the proofs, draw such inferences of fact therefrom as you determine should be drawn and to decide each and every one of the issues of fact in the case.

And so we come to one of the crucial questions in the case.

By what yardstick and in accordance with what rules of law are you to judge the credibility of the witnesses? [fol. 2362] Each one of you has given careful attention to the testimony as it came from the witnesses themselves. You have had a full opportunity to observe the witnesses and you have heard the testimony discussed in great detail by counsel.

You are the exclusive judges of the relative importance and credibility of the witnesses.

That I may refer to some portion of the evidence and not to another should not be taken by you as any indication as to my opinion of the comparative importance or weight of that particular evidence.

Now, sharp issues of fact are presented for determination and to a great extent the decisions depend upon the veracity of certain witnesses and the support or lack of support that they receive from other evidence and circumstances. The procedure established by our courts of law and a fair method is to submit issues of fact to a jury of sensible, conscientious and impartial men and women experienced in life's affairs; let them hear and see the witnesses, and then decide the issues. That is the duty you are called upon to perform. It is an honorable service and an important one for all concerned. Each juror must form his or her judgment solely upon the evidence presented in the court, [fol. 2363] uninfluenced by anything read in the newspapers or heard on the radio or in private conversation. The juror "sizes up the witness"—so to speak. To reconcile all the testimony is impossible, and it is for you members of the jury, upon careful consideration of all the proven facts and incidental circumstances, to determine what the truth is. You are to subject the testimony of all witnesses to the same scrutiny and the same standards, whether called by the prosecution or by the defendants.

You should consider—and naturally would, I think,—a witness' demeanor, his background, his or her candor, or lack of candor, possible bias or prejudice, means of information, and accuracy of recollection. You should consider whether the witness' testimony is supported or whether it is contradicted by other credible testimony or circumstances.

You should particularly consider whether a witness has an interest in the case for when a witness has an interest in the result, the temptation does exist to color his or her testimony, or possibly withhold certain facts. Do you believe that testimony has been affected by a personal interest of the witness? And if so—to what extent? You should weigh all these factors in considering how, and to what extent, such testimony is worthy of credit. I am not saying that every witness will falsify because he has an interest, [fol. 2364] but I say you may consider the possibility.

The greater a person's interest is in the case, the stronger is the temptation to falsify testimony, and the interest of the defendants who took the stand is of a character possessed by no other witness. Manifestly they have a vital interest in the outcome of the case. This interest is one of the matters which you may consider along with all the other attendant circumstances in determining the credence you will give to their testimony. Here again you may find that a defendant is telling the truth despite his obvious interest in the outcome, but you may consider a defendant's temptation to falsify.

As to the testimony of David Greenglass, Ruth Greenglass and Harry Gold, you must consider it carefully and act upon it with caution, for they are accused of being accomplices. An accomplice in this case is anybody that the prosecution charges agreed or confederated with any or all of the defendants in the commission of the crime charged, as alleged in the indictment. I am not saying that because a person is a co-conspirator or an accomplice, he or she is not to be believed. If this were so, many cases in this court could not be proven. In the Federal Court a defendant can be convicted upon the uncorroborated testimony of an ac- [fol. 2365] complice whose testimony satisfies the jury of the defendants' guilt beyond a reasonable doubt.

If you find that any witness has made a material misstatement with the intention of misleading you, you may disregard that part of the witness' testimony; you may disregard all of it if you do not believe it, or you may accept part of it if you find part of it is reliable and disregard the rest of it.

The fact that the defendant, Morton Sobell, who has a

right so to do, has not seen fit to testify in this case cannot be considered by you as any evidence against him or against any of the other defendants, or as a basis for any presumption or inference unfavorable to him or to them. You must not permit such fact to weigh in the slightest degree against any defendant, nor should it enter into your discussions or deliberations. The prosecution must prove defendants guilty by the required degree of proof as explained in these instructions. They are not required under our law to establish their innocence.

I charge you further that no inference is to be drawn against any defendant who has exercised his or her constitutional privilege against testifying as to any matters which may tend to incriminate him or her.

[fol. 2366] The defendant Ethel Rosenberg was cross-examined concerning her refusal to answer certain questions when she appeared before the Grand Jury on the ground that the answers might tend to incriminate her. Her failure to answer such questions is not to be taken as establishing the answers to any questions she was asked before the Grand Jury, but may be considered by you in determining the credibility of her answers to those same questions at this trial.

If you find that the law has not been violated, you should not hesitate for any reason to render a verdict of not guilty. But, on the other hand, if you find, in accordance with these instructions, that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty. Remember, you have taken an oath to determine this case upon the evidence.

Rulings made by me in the course of the trial are rulings purely on matters of law. They reflect no views of mine on the facts of the case. You should reach your verdict without fear or favor, without sympathy for or against either the defendants or the Government.

You are instructed that the question of possible punishment of the defendants in the event of conviction is no [fol. 2367] concern of the jury, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. You cannot allow a consideration of the punishment which may

be inflicted upon the defendants to influence your verdict in any way; the desire to avoid the performance of an unpleasant task cannot influence your verdict.

Your verdict will be guilty or not guilty as to the defendant Julius Rosenberg; guilty or not guilty as to the defendant Ethel Rosenberg and guilty or not guilty as to the defendant Morton Sobell.

Is there anything, counsel? Step up, if there is.

(The following discussion was had at the bench, outside the hearing of the jury.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. E. H. Bloch: There are two matters, if the Court please, items 36 to 40 of the defendants' proposed requests to charge, with respect to accomplice testimony and the jury taking it with suspicion, and also the testimony of a self confessed perjurer should also be taken with care and caution and suspicion.

The Court: You don't need to repeat. You just give me the numbers.

Mr. E. H. Bloch: 36 to——

[fol. 2368] The Court: I refuse to charge in the very language that you asked for. I have covered each one of those subjects in my charge.

Mr. E. H. Bloch: I respectfully except.

The Court: Very well.

Mr. E. H. Bloch: It was a suspicion, or the failure to charge the suspicion part, to which I object.

The Court: Very well.

Mr. E. H. Bloch: I am going to look. I have got some notes.

The Court: Make it quick, Mr. Bloch. I want to send this jury out right away.

Mr. A. Bloch: I except to that part of your Honor's charge, where you charged that the answers given by the defendant Ethel Rosenberg before the grand jury, may be taken in consideration by them in respect to her credibility, and I ask you to charge that if the answers were given in good faith, before she was charged with the crime or indicted or arrested, and she felt that she, in answering those

questions, might tend to incriminate herself, the fact that she answered these questions here, has no bearing on the matter, because here she is charged with the crime; she is on trial, and in order to defend herself she has answered the questions.

[fol. 2369] The Court: Well, I will not enlarge upon my charge.

Mr. A. Bloch: I except.

The Court: Very well.

Mr. A. Bloch: Then there is one more thing. I may have missed something—oh yes, your charge on the contention of the defendant that the reason that the defendants contend that the reason the Greenglasses did not tell the truth was a question of money; there is a further contention, the contention is that in order to save his wife from prosecution or arrest——

The Court: I said, "And for other reasons." I did say that.

Mr. A. Bloch: I know, but I would like to have it expressed.

The Court: No, I will not add to it. I think I said to the jury that I am only covering certain portions.

Mr. A. Bloch: I except.

The Court: Very well.

Mr. Kuntz: I have just one objection that will take half a second.

The Court: Go ahead.

Mr. Kuntz: We object, if your Honor please, to your charge that the jury can consider, and you admitted evidence [fol. 2370] of membership of activities in the Communist Party, on the question of intent of the defendants, and that the jury can so consider. We take objection to that.

The Court: Very well.

Mr. Phillips: One other. I don't know if I understood you correctly, but I think one time in your charge you said something relating to the present tension.

The Court: What?

Mr. Phillips: Tension, international world tension.

The Court: Oh, yes.

Mr. Phillips: As a special reason for being careful in enforcement of the law. I except to that statement.

The Court: Very well.

Mr. E. H. Bloch: If the Court please, I would like to except to that portion of the charge, which submits to the jury consideration on the basis of motive or intent, evidence concerning——

The Court: He just objected to that while you were away.

Mr. E. H. Bloch: I beg your pardon.

There is just one further exception that I would like to take. I would like to except to that part of your Honor's charge, dealing with motives or intent, and I ask your [fol. 2371] Honor to charge that the intent required under the statute is not merely an evil intent, but a specific intent, to the advantage——

The Court: I think I have covered it.

Mr. E. H. Bloch: I——

The Court: Very well.

Mr. Phillips: Not to overlook anything, may I at this moment——

The Court: Let's get on.

Mr. Phillips: —I respectfully except to the theory that your Honor asserted in relation to the conspiracy here, as though when two men talked of intending——

The Court: As it pertains to your client.

Mr. Phillips: As pertaining to my client.

The Court: Very well.

(End of discussion at bench.)

The Court: It becomes my duty now to excuse Mr. Moore, Mr. Nein, Mr. Lombardi and Mrs. Allen with the deep gratitude of the Court for your time, your interest in this case. I want you to know that we feel that you have performed well. I suggest also to the jurors, the alternate jurors I am about to excuse, that they do not discuss this case with anybody or permit anybody to discuss it with them.

[fol. 2372] My bailiff will escort the alternate jurors into the jury room first.

I would suggest the rest of the panel wait here for a minute and as soon as they have left with their hats and coats, then we will swear the marshals and the jury will retire.

You are excused for the balance of the term with the thanks of the Court.

(Marshals sworn.)

The Court: Very well, the jury will retire.

(Jury retired at 4:53 P.M.)

[fol. 2373] (The following took place at 6:30 p.m. in chambers:)

The Court: I have a communication from the jury, gentlemen. The jury would like a copy of the indictment and the jury would like a list of the witnesses. This is signed by the foreman.

Mr. Schaefer, you have a copy of the indictment. The list of witnesses, I think you ought to get together and agree upon between yourselves. Submit the list by agreement and we will send it in.

(At 6:40 p.m. the following took place:)

The Court: All right, now, gentlemen, the indictment and the list of witnesses are about to be sent in. You have all examined it and I take it it is perfectly agreeable with everybody.

Mr. Saypol: Satisfactory.

Mr. E. H. Bloch: All right.

Mr. Kuntz: The only thing, they may have meant the whole list.

The Court: They will let us know in a couple of minutes.

(At 8:10 p.m. the following took place in chambers:)

The Court: I have a communication from the jury, reading as follows:

[fol. 2374] "One of the members of the jury would like to hear Mrs. Ruth Greenglass' testimony, starting with first approach that Rosenberg made to her regarding securing of information for Russia."

Now, what I would suggest, if that is agreeable, I want to know where they want to end, because otherwise the stenographer will be reading all the testimony, and you can't very well, when they are there, suddenly say, "Well, is this

enough?" So what I think I shall do is to send back a communication to the jury, for them to specify just where they would like to end. Then we can have that part marked.

Is that agreeable?

Mr. Saypol: Yes.

Mr. A. Bloch: That is fair.

The Court: Would you write on here, please, Mr. Schaefer, "Judge would like to know at what point you would like the reporter to stop with his reading of this testimony?"

Is it agreeable, gentlemen?

Mr. A. Bloch: It is.

Mr. Saypol: Yes, it is.

(The above mentioned note was sent in to the jury.)

(At 8:12 p.m. the jury sent in a note and the following occured:)

[fol. 2375] The Court: (Reading): "Up to the line that David came home for his first furlough in January, 1945," is the reply from the jury.

So let us get the testimony at that part.

Mr. Cohn: Would you interpret that to mean the conversation or the preliminaries? I think it is at page 972.

Mr. A. Bloch: I think that covers quite a bit. It goes to conversation before she went out West; conversation she had with her husband out West and also cross-examination on that point.

Mr. Lane: And the conversation she had when she came back from the West, and conversation as she testified to.

Mr. Saypol: I don't think they have asked for any cross.

The Court: They haven't asked for the cross.

(Further discussion off the record.)

Mr. A. Bloch: You will find cross-examination of that at 1044.

The Court: I am not going to read the cross to them unless they request it.

Mr. A. Bloch: Well, I think when they ask for testimony, it means all the testimony on the subject.

The Court: We will start reading at 972, the top, and then [fol. 2376] over here at 982. Then I will ask the jury when we get finished whether that is what they want.

Mr. A. Bloch: Will you ask them whether they want the cross?

The Court: I won't put it in their mouths, but I will ask them whether there is anything else they want.

Mr. A. Bloch: I think if you give them the direct, you ought to give them the cross. That is the whole testimony on that topic.

The Court: The jury is intelligent. If that is what they want, they will ask for it.

Mr. A. Bloch: They might not think there is any other testimony on the subject.

The Court: I am going to handle it that way.

Mr. Phillips: Two testimonies go together. They didn't ask for the pages; they asked for the testimony.

(The following took place in the courtroom, after the jury took their seats in the jury box, at 8:15 p.m.:)

The Court: I have a communication from the jury, which I have read to all the counsel, in which they request the reading of the testimony of Mrs. Ruth Greenglass, commencing with the first approach that the defendant Rosenberg made to her regarding securing of information for Russia, up to the line, as the jury puts it, "That David [fol. 2377] came home for his first furlough in January, 1945."

Mr. Slavin, will you be good enough to read that to the jury, please?

(The reporter read the testimony, starting at page 972, beginning with:

"Q. And did you in fact go out to New Mexico in November, 1944?", and ending on page 982 with the question and answer reading as follows:

"Q. Approximately when did he arrive in New York City?

"A. On New Year's Day, 1945."

The Court: Have we read what the jury wanted?

Jurors: Yes.

The Court: Very well, the jury may retire.

Mr. E. H. Bloch: If the Court please, I make the request that the stenographer also read the cross-examination of Ruth Greenglass on this specific point——

The Court: Your request is denied. That has not been requested by the jury. The jury will retire.

We will give the jury exactly what they request.

Mr. E. H. Bloch: I respectfully except.

(Whereupon the jury retired from the courtroom at 8:30 p.m.)

(At 9:42 p.m. the following proceedings occurred in the [fol. 2378] absence of the jury.)

The Court: I have another communication from the jury——

Mr. Saypol: I notice the defendants aren't here.

The Court: I don't think they need by here for this. There isn't any problem——

The Clerk: They are on their way up now—here they are.

(At this point the defendants entered the courtroom.)

The Court: The jury wants all the exhibits except that which has been impounded, so will you gentlemen please get all the exhibits together, in evidence.

Mr. A. Bloch: Satisfactory to us.

The Court: Except those that have been impounded, and check them off together and give them to the bailiff so that they can be sent in. All right.

(Short recess.)

[fol. 2379] (At 10:55 p.m., the following proceedings occurred in chambers, outside of the presence of the jury:)

The Court: I have a communication from the jury which reads as follows:

"Judge Kaufman:

"One of the jurors has some doubt in his mind as to whether he can recommend leniency for one of the defendants. He is interested in knowing your mind on the matter."

I might say that I am not prepared as yet to give the answer. I want to give some thought to it.

Do you gentlemen have any thoughts on the matter?

Mr. A. Bloch: I can't very well suggest anything. It is all up to you, Judge.

The Court: Yes.

Mr. A. Bloch: Because ultimately you will be the one will pass on it.

The Court: My present inclination is to just read back to them that portion of my charge which dealt with punishment. I have sent my clerk to look up one case on the subject.

Mr. A. Bloch: I know they do it in state courts in every case where there isn't a compulsory——

[fol. 2380] The Court: Off the record.

(Further colloquy off the record.)

(The jury returned to the courtroom at 11:00 p.m.)

The Court: I have a communication from the jury which reads as follows:

"one of the jurors has some doubt in his mind as to whether or not he can recommend leniency for one of the defendants. He is interested in knowing your mind on the matter."

This communication was addressed to me.

I shall reread to you members of the jury that portion of my charge which dealt with the matter of punishment. Then I will give you some short explanation.

I said to you in my charge, you are instructed that the question of possible punishment of the defendants in the event of conviction is no concern of the jury and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. You cannot allow a consideration of a punishment which may be inflicted upon the defendants to influence your verdict in any way. The desire to avoid the performance of an unpleasant task cannot influence your verdict.

[fol. 2381] Now I want to say that if you want to make a recommendation, you can if you desire, but I believe it should be stated to the jury that the recommendation that you are going to make or intend to make should not in any way affect your decision. The decision is to be based on the

evidence, and it is my prerogative to follow or disregard any recommendation that you may make on the matter of punishment. Is that clear?

All right; very well, you will retire.

(The jury retired at 11:60 p.m.)

[fol. 2382] Jury in box at 12:10 a.m.)

The Court: Madam and gentlemen of the jury: I want to suit your convenience as much as I can. However, I also must take into mind the problems which the Marshal has for the district. Now, if you feel that you believe a verdict can be reached in a reasonable period of time, why then, I think it would probably be a good idea to continue your deliberations. Otherwise I will have to advise the Marshal that I will consider locking you up for the evening, and it will take him, I imagine, about an hour to make arrangements for accommodations, and so forth. I would suggest with that in mind, you go back into your jury room and formally send me a communication on the wish of the jury, and also, if there is anything else that I can be of any help on.

All right, you may retire.

(Jury excused.)

(The following took place in chambers at 12:22 a.m.)

The Court: I have a communication from the jury, which reads as follows:

"Judge Kaufman

"Will you kindly make arrangements as you suggested from the bench due to still existent dissident vote amongst us."

[fol. 2383] I think that what I am going to do is to ask the jury whether they have arrived upon a verdict as to any defendant, under Rule 31, and if they have, then I will ask them to go back and give us the verdict on that.

Mr. A. Bloch: Tonight?

The Court: Yes.

Mr. A. Bloch: That is cruelty to us.

The Court: Why prolong the agony? If they have it, they have it.

Mr. Kuntz: Judge Kaufman, I have a sort of a feeling that if you do that, that juror—now, I don't know who it is and I don't know for whom it is—might feel that this is a suggestion——

The Court: What I will do, if you agree, I will simply say, send in a note without sending for them again, and ask them if they have agreed upon a verdict as to any defendants. If so, to return the verdict as to that defendant or defendants, and then we will continue the deliberations as to others.

Mr. Saypol: I think that is in direct accord with the rule, is it not?

The Court: Yes.

Mr. Kuntz: I am not questioning the rule. I am just a bit [fol. 2384] uneasy about the effect it might have. Now, I know you don't want to create any effect that should not be created, but I am just a little bit uneasy.

The Court: There is nothing unusual about it.

Mr. E. H. Bloch: Even though you have the power to do that and the right to fully exercise that power, would anybody be hurt if the jury were asked whether they can agree, and if they say no, to send them to a hotel? They always have time to return their verdict tomorrow morning.

The Court: Well, if they have agreed upon any defendant, there is no reason why, if the jury has been polled and if they have agreed, why there shouldn't be such a verdict. Let them be the best judge of that. I will merely put the question to them. I won't ask for an answer in the courtroom and I will send them back there to bring in a verdict to that defendant or defendants.

Mr. Kuntz: What does the rule say? I haven't read it.

The Court: (Reading): "Several defendants"—this is under "Verdict," Rule 31—"If there are two or more defendants, the jury at any time during the deliberations may return a verdict or verdicts with respect to a defendant or [fol. 2385] defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again."

Mr. E. H. Bloch: Isn't there implicit in that rule that a

verdict in a case where there are several defendants should be read at one time?

The Court: No, no.

I might tell you that the law on the subject is that it can be done. I remember, as an assistant United States Attorney, way back in 1938, when I tried the heart disease insurance cases before Judge Patterson, that that is exactly what happened. There was a partial verdict taken at night and there was another verdict taken the next morning. That was before the rule.

Mr. Saypol: Not only that, but it is my recollection that the Court of Appeals recommends such a practice.

Mr. Kuntz: I didn't raise it as a legal question. I was thinking of the question of expediency.

The Court: Would you rather I sent a note in?

Mr. Phillips: I would personally like to see them locked up for the night.

The Court: I am going to ask them the question.

[fol. 2386] Mr. Kuntz: I don't think we should have any objection to a note, as distinguished from them coming in.

The Court: All right, Mr. Schaefer, will you take this note to the jurors.

> "Judge Kaufman would like to know if you have agreed upon a verdict as to any of the defendants? If so, you may return your verdict as to the defendant or defendants as to whom you have agreed."

(To the clerk) Will you read that into the record?

The Reporter: I took it down as you dictated it.

The Court: All right, gentlemen, I am going to send that note in, and if you have no objection——

Mr. Saypol: Does your Honor think it advisable to let the record show that as to those upon which they haven't agreed that they continue to deliberate?

The Court: Well, do you think I ought to say that in the note? Is that your thought? I intend to do that.

Mr. Saypol: Oh, I see.

Mr. E. H. Bloch: Your Honor, I think that the hour is quite late. We came in very early this morning. It is not that we are tired but I think the jury is pretty tired and I

[fols. 2387 2387-A] think in all fairness to the defendant, as to whom the jury has been unable to agree, they ought to get a night's sleep and resume their deliberations.

The Court: Well, I shall do that.

Mr. E. H. Bloch: Oh, I assumed that——

The Court: As to that particular defendant, I am going to lock them up and let them go on and deliberate. Oh, yes, there will be no further deliberation as to that. All right, gentlemen.

In the meantime, will you tell the marshal to start making arrangements for their sleeping accommodations.

(Bailiff brings note into the jurors.)

(The following took place at 12:35 a.m. in chambers.)

The Court: All right, Mr. Bloch, I have an answer to the communication which I sent to the jury and it reads as follows:

> "Judge Kaufman
>
> "We have reached our verdict on two of the defendants and we prefer to reserve rendering our verdict on all these defendants until we have complete unanimity."

So, I am locking them up.

(Discussion off the record.)

(Adjourned to March 29, 1951, at 10:00 a.m.)

[fol. 2388] New York, March 29, 1951;

10:00 O'clock a. m.

(At 11:00 a. m. the following proceedings occurred in the courtroom.)

The Court: Bring the jury in.

Mr. Saypol: I have asked Mr. Bloch to note the fact that Mr. Bloch, Sr. is not here and by agreement he will speak for him.

Mr. E. H. Bloch: That is correct.

The Court: All right.

(The jury entered the courtroom at 11:01 a. m.)

The Clerk: Will the jurors please answer as their names are called.

(Jurors' names called by the clerk.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: Yes, your Honor, we have.

The Clerk: How say you?

VERDICT

The Foreman: We the jury find Julius Rosenberg guilty as charged.

We the jury find Ethel Rosenberg guilty as charged.

[fol. 2389] We the jury find Morton Sobell guilty as charged.

The Clerk: Members of the jury, listen to your verdict as it stands recorded. You say you find the defendant Julius Rosenberg guilty, Ethel Rosenberg guilty, and Morton Sobell guilty and so say you all?

Jurors: Yes.

Mr. E. H. Bloch: If the Court please, I ask that the jury be polled as to each defendant.

The Court: Very well.

The Clerk: Members of the jury, listen to your verdict as it stands recorded as to Julius Rosenberg. You say you find Julius Rosenberg guilty——

The Foreman: Yes.

The Court: Ask each one as to each defendant.

Do you find Julius Rosenberg, Ethel Rosenberg and Morton Sobell guilty, Mr. Lebonitte?

The Foreman: Yes, your Honor.

The Court: All right.

(The clerk polled the jury and each of the jurors stated that the verdict announced by the foreman was their verdict.)

The Clerk: The jury has been polled.

Mr. E. H. Bloch: If the Court please, I would like to [fol. 2390] ask leave to make any motions with respect to the jury verdict——

The Court: On the day of sentence.

Mr. E. H. Bloch: On the day of sentence.

The Court: Very well.

Mr. E. H. Bloch: I think I am entitled to five days under the rules.

The Court: (To jury) I want to say to you, madam and members of the jury, that you have my deepest gratitude for the conscientious and industrious way in which you went about deliberating in this case. This case is important. It is important to the Government of the United States.

My own opinion is that your verdict is a correct verdict, and what I was particularly pleased about was the time which you took to deliberate in this case. I must say that as an individual I cannot be happy because it is a sad day for America. The thought that citizens of our country would lend themselves to the destruction of their own country by the most destructive weapon known to man is so shocking that I can't find words to describe this loathsome offense.

I want to say to defense counsel that I appreciate the courtesy that they extended to the Court during the course [fol. 2391] of this trial. I think they demeaned themselves as attorneys should.

To you, Mr. Saypol, Mr. Lane, Mr. Cohn, Mr. Kilsheimer, Mr. Branigan who isn't here, I want to congratulate you all upon your capable and fair presentation of this case, that your preparation was painstaking. And to the FBI, to Mr. Xorton and to Mr. Harrington whom I never knew until this case began, I observed them in this court, in the tradition of the FBI, perfect gentlemen at all times, fair and decent.

Again I say a great tribute is due to the FBI and Mr. Hoover for the splendid job that they have done in this case.

[fol. 2392] STATEMENT OF MR. SAYPOL.

Mr. Saypol: Will your Honor allow me to say something in response even though it may be unusual?

I would like to say it in the presence of the jury while they are here.

Those of us who have practiced law for some time know that a Court is never to be thanked on the conclusion of a

proceeding, and properly so, on the premise that that is its duty, regardless of the way in which its duty is exercised.

Knowing your Honor as I do, almost impelled as I would be to express myself felicitously in respect of the conduct of the trial, I shall refrain with dignity from doing so.

By the same token, at the commencement of my summation I expressed to the members of the jury our appreciation at the Government's table for its patient consideration, for its careful attention. I still refrain from thanks on the premise that the jury too, just as your Honor, need no thanks for having done that to which we are collectively and individually sworn.

Your Honor has taken my thought, although perhaps as a prosecutor one might expect from me more likely some expression of enthusiasm at the conclusion of a prosecution which has turned in the direction which my staff and I pursued.

[fol. 2393] The conviction of defendants in a criminal case is no occasion for exultation. It has been said that the Government never loses a case—because if there is a conviction the guilty are punished, and if there is an acquittal, the presumption of innocence must permanently prevail. The conviction of these defendants, however, is an occasion for sober reflection. That you the jury so considered it is evidence from the fact that you deliberated for six and a half hours last night, and the nature of your requests as to the evidence and the identity of the witnesses amongst other things demonstrates that you complied throughout with the instructions of the learned Court; and that your conclusion is a mature, a reflected one.

I say to you now that the decision toward prosecution was predicated on the same factors.

It is not possible for a great nation to be free from traitors, but this case shows that it is possible to reach them and ultimately bring them to the bar for punishment. Lord Acton said, "Eternal vigilance is the price of freedom." That has been repeated time and again. This case has merely adapted that saying to the atomic age.

The jury's verdict is a ringing answer of our democratic [fol. 2394] society to those who would destroy it. First, because a full, fair, open and complete trial—in sound American tradition—was given to a group of people who

represented perhaps the sharpest secret eyes of our enemies. They were given every opportunity, as you the jury know, to present every defense and, as I said for myself and my colleagues in my summation, I would fight at all times for their right to defend themselves freely and vigorously.

Secondly, your verdict is a warning that our democratic society, while maintaining its freedom, can nevertheless fight back against treasonable activities.

The case itself has implications so wide in their ramifications that they involve the very question of whether or when the devastation of atomic war may fall upon this world. The case is a necessary by-product of the atomic age. Let us hope that it will serve to supply the democracies of the world with some significant lessons.

Those of us in the Department of Justice—Attorney General McGrath and I and our staffs, Mr. J. Edgar Hoover and the men of the Federal Bureau of Investigation—who have been close to the development of this case, have always been aware of the implications.

To you the jury as citizens I impart the assurance all [fol. 2395] of us are continuing our work in this specialty.

I want to pay tribute to my staff and the men who prepared this case and presented it, for the credit is due entirely to them: to Mr. Lane, my chief assistant; to Mr. Cohn, my confidential assistant; to Mr. Kilsheimer and to Mr. Branigan.

I have had many occasions, like the Judge has, to express my admiration for the work of the men and the women of the Federal Bureau of Investigation. It can only be expressed in superlatives. It is not a police force; it is an investigative agency. Its vigilance is all-pervading, untiring, ceaseless—what is more, completely willing.

You jurors may go now, for you disband and revert to your personal roles, I hope satisfied that our work continues.

I say again I shall not thank you. I will say I am proud to have worked in this court before you and I am satisfied of the propriety, of the virtue, of the justice of your verdict.

[fol. 2396] STATEMENT OF MR. KUNTZ

Mr. Kuntz: If your Honor please, I wonder if I may have the privilege of a few words in my own behalf.

The Court: Yes.

Mr. Kuntz: I do want to thank the jury as your Honor did for the patience and care with which they sat in this case.

I wanted to say to them through you that it was my duty as an officer of this court to defend the rights of my client zealously and strongly, and that I wanted to assure the jury and the Court, as one officer of the court to another officer of the court here, that what I might have said during the trial or during the examination or summation was said as an officer of the court, and was not said against any person as an individual.

I want to assure this jury that to the best of my ability I did strive hard on behalf of my client.

The Court: I am sure you did .

Mr. Kuntz: And I want to say to Mr. Saypol as an officer of this court, as one officer of the court to another, I am willing to shake his hand after a job that we both had to do.

The Court: Well, I am certain that that is so.

Mr. E. H. Bloch: If the Court please, I was going to refrain from making any comment. I am going to be very [fol. 2397] brief. I would like to restate what I said when I opened to the jury. I want to extend my appreciation to the Court for its courtesies, and again I repeat I want to extend my appreciation for the courtesies extended to me by Mr. Saypol and the members of his staff, as well as the members of the FBI, and I would like to say to the jury that a lawyer does not always win a case; all that a lawyer expects is a jury to decide a case on the evidence with mature deliberation.

I feel satisfied by reason of the length of time that you took for your deliberations, as well as the questions asked during the course of your deliberations that you examined very carefully the evidence and came to a certain conclusion.

[fol. 2398] The Court: Thank you.

Now I say to the jurors, I almost feel as if I will miss seeing those faces here morning after morning, but I know

it has been a tremendous inconvenience to most of you. It has taken you away from your businesses. But by doing so you have shown recognition of your duties as citizens.

Most citizens don't realize that something is demanded of them, that they cannot have all the virtues of America, they cannot take all the time without giving something in return. I think you realize it now by your jury service.

You remember I was rather impatient with the panel when we were trying to select the jury because so many requests were being made by people for what I considered puny reasons for excuse from service. Well, I am sure that those people didn't recognize their duties of citizenship. To them, well, they got a little notice to go to the Federal Court to serve, and they were going to get out of that as best they could.

I think a process of education is necessary today for our citizens. They must once again realize it is not all a case of take. You have got to do some giving in America.

[fol. 2399] I just want to give you one last admonition before I send you off, and that is, please don't discuss this case, don't discuss your deliberations, don't discuss your verdict with the members of the press or with anybody.

God bless you all.

The Clerk: Members of the jury, you are excused for the balance of the term with the thanks of the Court.

(The jury left the courtroom at 11:15 a. m.)

Mr. E. H. Bloch: If the Court pleases, when is the Court disposed to set the date of sentence?

The Court: Incidentally, I want to say that I think we have all overlooked the fine work that the Marshal's office has done.

I know that they——

Oh, marshal, I am glad to see you (referring to Mr. Carroll).

I know that frequently you had gotten the devil from some of the judges, and I think it is only fair once in a while that they pay you some tribute for the fine work that you and your deputies did throughout the trial. I know it was quite a drain on your office.

Mr. Carroll: Thank you.

Mr. Kuntz: And they have been so very courteous to us, and I want to thank them on behalf of my client and myself. [fol. 2400] They have been very courteous.

Mr. E. H. Bloch: And that is true so far as the Rosenbergs.

The Court: Thank you.

Mr. Saypol: Well, might I say a word, if you will allow me, very briefly?

The Court: Very brief. I want to get a little sleep.

Mr. Saypol: Since your Honor has volunteered it, I know it better than anybody. They have worked with us overtime till midnight, till 1:00, 2:00 and 3:00 in the morning, on Saturdays, on Sundays, willingly, without complaint, without meals, without overtime pay.

I express my appreciation to Mr. Carroll, as I have before, and to all of his colleagues, and I know that it will continue.

The Court: Now Mr. Saypol, I would suggest April 5th for sentence, next Thursday.

Have you any other thoughts on the subject?

Mr. Saypol: No, I think that is appropriate, however the Court is disposed.

The Court: All right, gentlemen, April 5th for motions and sentence.

Mr. E. H. Bloch: Motions and sentence.

The Court: At 10:30 a. m. Thank you.

The defendants are remanded.

(Adjourned to April 5, 1951, at 10:30 a. m.)

[fol. 2401] New York,

April 5, 1951,

10:30 o'clock a. m.

The Court: I will hear motions.

Mr. E. H. Bloch: If the Court please, you will recall that the defendants were given the opportunity to make motions and their time was extended until today, and at this time I would like to make one motion:

ROSENBERGS MOTION FOR A NEW TRIAL AND IN ARREST OF JUDGMENT

The defendants Julius Rosenberg and Ethel Rosenberg move for a new trial under Rule 33 of the Federal Rules of Criminal Procedure and in arrest of judgment under Rule 34 of the Federal Rules of Criminal Procedure upon the first, all the grounds constitutional and other as though fully restated herein made to dismiss the indictment at the commencement of the trial in this action and also made at the end of the Government's case, and likewise made and repeated at the end of the entire case, and for judgment of acquittal, and secondly, upon all the objections and other motions made by the defendants during the trial which were decided adversely to the defendants, and upon all the exceptions taken to adverse rulings of the Court as well as [fol. 2402] the objections and exceptions taken to the Court's charge to the jury, and thirdly, upon the further ground that the rulings of the Court on the above, as stated in the first and second, prejudiced the defendants and denied them their right to a fair and impartial trial by jury as guaranteed by the Constitution of the United States.

The Court: Motion denied.

Mr. E. H. Bloch: I respectfully except.

The Court: I will hear Mr. Sobell's counsel.

Proceed, Mr. Phillips.

JOINDER BY SOBELL IN MOTION AND DENIAL THEREOF

Mr. Phillips: If your Honor please, on behalf of the defendant Sobell I join in the motion made by the other defendants as just stated by Mr. Bloch, and I trust your Honor will accept that offer with the same force and effect as though I had made the motion.

The Court: Yes.

Mr. Phillips: Initially. On the additional ground that I raised on behalf of the defendant Sobell not applicable to the other defendants at the close of the Government's case and at the close of the whole case, as though I repeated it at this time in the same language or approximately the same language.

The Court: Very well.

Mr. Phillips: Is it appropriate now to make a motion in arrest of judgment?

[fol. 2403] The Court: Yes.

Mr. Phillips: On the motion in arrest of judgment I shall be constrained, if your Honor please, to reveal some shocking circumstances which I shall do very, very reluctantly. I shall do so only from the conviction that the most important thing in my life at the present moment, more important than the two billion people living on this planet, are the rights of my client, Sobell.

The force and power of a retainer in the mind and heart of a lawyer who is conscientious in his work is more powerful, if your Honor please, than any other emotion, any other human emotion that I can think of.

In the thing that I am about to reveal, if your Honor please, there is much that is not beautiful, much that is not creditable to the law enforcement agencies of the United States of America, and I loving my country more than anything else feel that in revealing those circumstances I might injure my country in the eyes of the world, but I am powerless to stop and not to say what I must say.

If your Honor please, amongst the pieces of evidence in this case is an exhibit, Exhibit 25. That exhibit is a card, a small card on one side of which there is some typewritten matter and some script matter and the signature of Morton [fol. 2404] Sobell. I am not quarreling with that side of the card. Naturally I have my own opinion that the words and the script were written later, but that is beside the point, but on the reverse side of the card, after much script and some little typewriting there is at the bottom near within about a quarter of an inch of the bottom of that card, written three words in the script of a man by the name of Huggins. Huggins was the witness and he said it was his handwriting. Those three words read "Deported from Mexico."

Now your Honor please, if I am able to show that those words "Deported from Mexico" are a downright falsehood, I need not show that the law enforcement agencies, the Federal Bureau of Investigation knew about that because they must have known about that.

The Court: Well, you had your opportunity at the trial to show it, didn't you?

Mr. Phillips: Just a moment. I expected to be met by

that point and I shall meet that. I shall come to it eventually.

[fol. 2405] First let me state my facts on which I base my points.

The Court: Very well.

Mr. Phillips: Then if I have omitted anything before, if I haven't done my duty heretofore, if I was too stupid perhaps to see the point at the time——

The Court: You can be accused of many things, but not that, Mr. Phillips.

Mr. Phillips: But, if your Honor please, if at the moment I didn't see that point, because in the heat of something else, in some other thoughts I missed it, that is another problem. We will come to that in a little while.

"Deported from Mexico," these three words are as untrue as if I said, "The sun ceases to shine."

Mr. Saypol: Just a minute. I must ask an interruption here. If we are going to have any allegations at this stage of the case about untruths, about frauds, about anything that an astute lawyer with long experience has overlooked in the course of a fair and full trial, with all its opportunit-es, I must insist that it be done formally, by affidavit, so that those who perhaps may make charges which are not sustained may be looked to and brought to book.

The Court: No, I will take his motion at this point in arrest of judgment.

[fol. 2406] Mr. Phillips: If your Honor please, I did not say "I overlooked". I said, "if I overlooked."

The Court: All right. Now, I will say this, however: You remember, this is a motion in arrest of judgment.

Mr. Phillips: Arrest of judgment and discharge of the prisoner.

The Court: Very well. Now you get along with your point, Mr. Phillips, I will hear it.

Mr. Phillips: I don't think I am in the habit of taking much longer than I need in expressing thoughts.

The Court: Go ahead.

Mr. Phillips: What I am about to say, I am going to say on the strength of an affidavit, which I shall hand over to the Court. I am not saying this from hearsay, as though I were there, because I wasn't.

The Court: Whose affidavit have you got?

Mr. Phillips: The affidavit of my client, Morton Sobell.

The Court: I see. He had an opportunity at the trial to take the stand did he not?

Mr. Phillips: I say again——

The Court: Isn't this a roundabout way to deny allegations?

Mr. Phillips: I don't know which way that is, if your [fol. 2407] Honor please. If I have a right to make that motion, if I have a right to introduce——

The Court: You can't have your cake and eat it, you know. You had an opportunity to put him on the stand. He decided he didn't want to take the stand and deny these allegations.

Mr. Phillips: If your Honor pleases,——

The Court: Now, by way of an affidavit you are saying that something that the Government proved was not true.

Mr. Phillips: If your Honor please, all that your Honor says, I am going to meet eventually, before I am through with my discussion.

The Court: Go ahead.

Mr. Phillips: I assure you. I might say, however, before I reach that point, that what we did not do or what we overlooked to do will not excuse our Government in the brutal assault on a man and kidnapping a man and abducting an American citizen, born in this country, contrary to the statute and contrary to the laws.

The Court: Mr. Phillips, did you know what you are now stating while this trial was in process?

Mr. Phillips: I beg your Honor's pardon. I did not know it. I heard it.

The Court: You heard it.

[fol. 2408] Mr. Phillips: Yes.

The Court: You heard those facts, didn't you?

Mr. Phillips: Yes.

The Court: But you did not see fit, nor did your client see fit, at the trial to make an issue of t-at?

Mr. Phillips: Then why don't you wait for me? I did not expect that the Government would introduce a card which is a falsehood on its face. I did not expect that they would introduce a false statement in order to bolster up a theory of flight.

Mr. Saypol: I have to object.

Mr. Phillips: When it is a fact, if your Honor pleases——

Mr. Saypol: I have to inject myself again with great regret, because I think it is important for the Court in its reflection to remember that when this issue first arose in the course of the trial, there was vigorous opposition to the offering of secondary proof.

The Court: I remember it very well.

Mr. Saypol: And it was necessary to fly the witness up from Laredo, Texas, overnight to give direct testimony, so that at least there was that additional day in which there was knowledge.

The Court: Not only that, but the witness was cross-examined as to that particular phrase.

[fol. 2409] Mr. Saypol: True, true; but the defendant knew the day before what the contents of that card were.

The Court: All right.

Mr. Phillips: Will I, if your Honor pleases, be permitted by Mr. Saypol——

The Court: Go ahead.

Mr. Phillips: —to finish? I know he doesn't like this. I wouldn't in his place, either.

The Court: Oh, now, don't make that comment Mr. Phillips.

Mr. Phillips: To the extent it is provoked, I apologize to the Court.

Let me bring these facts to your Honor's attention.

On the 16th of August, 1950, Mr. Sobell, at his home, in Mexico City, had finished his dinner with his wife and two children, and one of the children, the infant—I think it was then twelve months old—was in bed. The affidavit is so brief that I might as well read it in exactly the words in which I have it, if your Honor please.

The Court: Can't you summarize it or characterize it? Maybe Mr. Kuntz could characterize it.

Mr. Phillips: I will give it to you in the words of Mr. Sobell, as he gave it to me:

[fol. 2410] "Morton, Sobell, being duly sworn, deposes and says:

"I am one of the defendants herein and I make this affidavit in the interest of justice and in furtherance of my

rights as an American born and brought up in this country.

"On Wednesday, August 16, 1950, at about 8:00 p. m. we had just finished our dinner in our apartment in Mexico City in the United States of Mexico, and while my wife and I were lingering over our coffee there was a knock on the door. My older daughter opened the door and three men burst into the room with drawn guns and bodies poised for shooting; these men did not ask my name, did not say what they wanted. I demanded to see a warrant, or some other legal process. No reply, except some vague charge that I was one 'Johnnie Jones' and that I robbed a bank in Acapulco in the sum of $15,000.00 was made. Of course, I vehemently denied the charge and tried to show them my papers, visas, etc., to prove that I was no bank robber.

"One of the men showed a piece of metal in his hand and said they were police. They were dressed in civilian clothes. A fourth man came later. He also was in civilian clothes.

[fol. 2411] "Only about ten minutes lapsed from the time that they came"——

I will give Mr. Saypol a copy of the affidavit.

Mr. Saypol: Yes, will you, please.

Mr. Phillips: Yes. (Continuing)

"Only about ten minutes lapsed from the time that they came till they hustled me out, and that was after I insisted on calling the American Embassy."

The next few words I inserted in ink. I will have Mr. Sobell initial those words. I omitted them in drafting the affidavit. (Continuing):

"but without being permitted to do so."

"They picked me up bodily and carried me down from the fourth floor to the ground floor. In the street I kept shouting for the police. A taxi was hailed and they opened the door; tried to force me into the taxi; when two more men came in and beat me over the head with blackjacks until I lost consciousness. I woke up in the taxi and I was stretched horizontally at the feet of the three men.

"When the car stopped in front of a building, they ordered me to get up; they told me to get into the building, but not to make a scene or they would plug me. We walked to the elevator; we went upstairs, and, we went into an office."

[fol. 2412] I might say, if your Honor pleases, that those men spoke English.

The Court: But they were Mexicans?

Mr. Phillips: I am giving you the facts as I got them.

The Court: You say they spoke English.

Mr. Phillips: I was not there, if your Honor pleases. I am giving you the facts as I got them from this affidavit. This affidavit must speak for itself.

The Court: Well, has your client said they were Mexicans and you left it out of the affidavit?

Mr. Phillips: They said they were Mexicans.

The Court: All right.

Mr. Phillips: (Continuing) "They sat me down and a slim, tall, dark man came over; he looked at me. I asked him what it was all about. He slapped me in the face and told me that they were the ones that were asking questions. At that point I discovered that my head was bloody and my shirt bespattered with blood.

"However, they asked me no questions, but they photographed me in several poses. We spent in that building from approximately 8:30 p.m. till 4:00 a.m. At 12:00 midnight, they offered me something to eat; but I had no appetite for food. During all the time no one questioned [fol. 2413] me. Some persons who identified themselves as officers to guard me chatted with me but expressed ignorance of the reason I was there.

"At 4:00 a.m. I was moved into a large four-door Packard and seated in the rear with two armed men, one on each side of me. At that moment, the same tall, thin man came to the door and spoke to my guards in English saying to them 'If he makes any trouble shoot him.'

"The driver of the car, who apparently was the leader of expedition, and who answered to the name of 'Julio' told me that they were taking me to the Chief of the Mexican Police for further action."

I suppose his name is pronounced "Hulio".

The Court: It doesn't make any difference how it is pronounced.

Mr. Phillips: I beg your pardon?

The Court: It wouldn't make any difference how it is pronounced.

Mr. Phillips: I wrote it, of course, as it is spelled, but

Mexican pronounciation, as far as I remember my little Spanish from 57 years ago, was "Hulio". I am wrong, if your Honor please, I should say 55 years ago. (Continuing) "With a number of stops for one reason or another, we drove on until about 6:00 p.m. At that Julio tried to [fol. 2413a] make a phone call or he did make one, and he told me that he was trying to get the chief of police. The same thing happened at about 10:00 p.m., and at midnight on August 17th, telling me that he was trying to make sure that the chief of police would be available.

[fol. 2414] "At about 1:30 a.m. we arrived at Nueva Lorado, we stopped in front of a building, and Julio went into the building and returned in about ten minutes and told me that he had spoken to the Chief and that the Chief told him to take me across the border and let me go.

"We stopped at the Mexican Customs on the Mexican side of the bridge, across the Rio Grande marking the border. No examination was made of my baggage and then we waited around in the car for about ten minutes. Julio returned and we started onward. When we reached the bridge, which as heretofore stated marks the boundary between the U.S.A. and Mexico, our car was flagged. We stopped and the front door opened. A man entered with a badge in his hand and stated that he was a United States agent and he remained in the car. When we arrived at the United States Customs I was directed to sign a card, arrested after they searched my baggage and myself. They handcuffed me and placed me in jail where I remained for five days, after which time I was taken to New York City."

I might add, I ommitted to say that here in Laredo, he waived extradition to come to New York.

The Court: Why didn't you submit that to the jury?

Mr. Phillips: I beg your pardon?

The Court: Why didn't you submit that to the jury?

[fol. 1215] Mr. Phillips: Now, just a moment. I will answer that, of course.

The Court: Answer it right now.

Mr. Phillips: I am coming to that.

The Court: Would you answer it right now?

Mr. Phillips: Am I right in saying——

The Court: Answer it now, Mr. Phillips.

Mr. Phillips: You want me to answer it first?

The Court: Yes.

Mr. Phillips: Well, in order to answer that, we would have to place Sobell on the witness stand. We had already virtually—at that time, I think it was still in dispute. I took the position that we ought to put him on the witness stand. My colleague took a contrary position. We discussed that pro and con until almost the last day of the trial, when he came in and told you in the courtroom there that we had decided to do otherwise. I yielded to the superior experience in criminal trials of my colleague, Mr. Kuntz. I still believe he was right.

Without that flight, there is absolutely no case whatsoever.

The Court: Well, I don't agree with you.

Mr. Phillips: Well your Honor——

The Court: Do you remember, I put it very squarely [fol. 2416] to the jury, "If you do not believe Elitcher, you must acquit"?

Mr. Phillips: Your Honor has unquestionably disagreed on that theory all the way through, and up to the present moment and for some time after this your Honor's disagreement is controlling, so I am not disputing that for a moment.

The Court: Well, all right.

Mr. Phillips: But I say this, and I will tell you right now that Mr. Saypol in his summation clinched my argument that there was no conspiracy of the kind he tried to show. You remember what I thought at the time a rather clever illustration about the wheel, with Rosenberg in the center as the hub and the spokes coming over here. I have taken the trouble to draw that kind of wheel, and here we have Rosenberg in the center. A.B.R. Let us say "B" is who? Sobell. "A" is Elitcher. Elitcher gives information to "R". Now here is another spoke (indicating). "C" gives information to "D" and "D" gives it to "R". Would you say that "C", "D" and "A" are in the same conspiracy? Of course not. His own illustration was conclusive proof of the incorrectness of a conspiracy.

However, if I thought I had the eloquence and the persuasive power to change your Honor's mind at this very [fol. 2417] moment I would continue still further. To me it is so clear that the case we have been trying is not a

case in which Sobell is in the slightest degree involved, but I sometimes marvel that it is not as clear as the noon day sun to anybody else to whom I have expressed that.

Too many errors have been made in the course of the world's history. Many judicial errors have been made and some of them fatal, and I invite your Honor to read the book "Convicting The Innocent," by—what is the man's name—Burchard. It is a very remarkable book and every judge who is going to be on the bench ought to acquire that book as the first reading of his career.

The Court: There is always that problem in every case.

Mr. Phillips: There is always that problem.

The Court: A judge is always concerned with seeing that the innocent are not convicted, just as I am sure, and I want to believe, that the United States Attorney, Mr. Saypol is, and the Government, because when the time comes that they are not interested in protecting the innocent, then we might as well close the courts right down.

Mr. Phillips: Your Honor, there are various kinds of interests. There is the interest of passion. There is the [fol. 2418] interest of lust in passion; there is the interest of patriotism; there is the interest of idealism; there is the interest of filthy lucre. There are all kinds of interests, and the Government's interest in this case was to get Sobell by force, by abduction, by kidnaping, with the cooperation of the Mexican authorities; the United States on one side and the Mexican authorities on the other side, with constant telephone calls between them, and the proof is here —

The Court: Mr. Phillips, the jury has spoken. You and your co-counsel have been eloquent in his defense. You have heard the evidence. He has been tried in the American way. The accuser was on the stand subject to cross-examination, the most exhaustive kind of cross-examination, and the jury has spoken. I believe, I firmly believe that I was as impartial as any human being could possibly be in this trial. I put it squarely to the jury on your client, that if they didn't believe Elitcher they must acquit him.

Mr. Phillips: Right, no doubt about that.

Mr. Saypol: I have an observation.

Mr. Phillips: If your Honor please, does that mean that you may now shut your eyes——

The Court: Well——

Mr. Phillips: Wait a minute, wait a moment. Does that [fol. 2419] mean you may now shut your eyes to the defects, the fatal defects in the prosecution?

The Court: If I thought there was a fatal defect——

Mr. Philips: Just a moment.

The Court: —I would have ruled in your favor in the earlier stages.

Mr. Phillips: Will your Honor accept my affidavit?

The Court: Certainly. Make it a file paper.

Mr. Phillips: Will your Honor give me another minute?

The Court: All right. He has another minute, Mr. Saypol.

Mr. Phillips: Let us understand what I am saying now is not only by way of criticism of the United States authorities; it demands judicial action on the subject of the jurisdiction not of this court only, but of the United States of America on the body of Sobell.

The Court: I get your point.

[fol. 2420] Mr. Saypol: You get what I am saying.

Mr. Phillips: And then the United States of America by these methods secured the body of Sobell, jurisdiction over him by a criminal, illegal, act, and so the United States of America must send Sobell back to the place where they took him from, to deal with him accordingly some time in the future.

The Court: I get your point.

Mr. Phillips: I am not doing this merely to create a scandal and your Honor will now understand my reluctance during the trial in not bringing in this——

The Court: That I will never understand.

Mr. Phillips: Well, may I tell it to you then?

The Court: No, no, I have heard you.

Mr. Phillips: You didn't hear the additional element that was in my mind.

The Court: Let me hear it.

Mr. Phillips: Knowing as I do that Sobell's departure from the United States was not under circumstances of secrecy, I knew that he had bought a ticket in his own name,

I knew that he traveled with his wife and two children undisguised to Mexico by air——

The Court: You didn't even prove that he had left the United States under his own name. You could have called an airline official. You inferred that he did, and I per-
[fol. 2421] mitted you to argue that to the jury.

Mr. Phillips: It wasn't taken in evidence, I understand.

The Court: It is not in evidence.

Mr. Phillips: Some reference was made to it.

The Court: Go ahead.

Mr. Phillips: Very well. Knowing that, if your Honor please, I knew that if the Government will bring that in, it will be up to the Government to explain how he got back. Then I said to myself, if the Government will explain how he got back truthfully, that will end the case.

The Court: Well, when the Government explained how he got back and you didn't like the explanation——

Mr. Phillips: Just a moment, just a moment. Wait a moment. I anticipated—I had a right to anticipate that my Government will not deliver into court spurious evidence in order to avoid an issue of that kind.

The Court: You have no right to make that charge. You have no right to make that charge, Mr. Phillips.

Mr. Phillips: I make it with the full responsibility of what I am saying.

The Court: No, you have no right to make that charge. That witness was examined and cross-examined and the
[fol. 2422] jury believed it was not spurious.

Mr. Phillips: That affidavit makes the charge; I don't.

The Court: You mean your client's affidavit?

Mr. Phillips: And I tell you that that affidavit I believe to be——

The Court: Well, I would rather have you characterize it as your client's charge; I would rather not have it come from you.

Mr. Phillips: If your Honor please, I am an advocate. I don't know these facts. Where do I receive them from? Somebody tells me them.

The Court: Mr. Phillips, I have your point.

Mr. Phillips: And I would like your Honor, in my opinion, what I am going to request is a very reasonable re-

quest to make: It is my suggestion that further proceedings in the matter of Sobell be held in abeyance by your Honor until you have had an opportunity to investigate the statements made in this affidavit that I have just handed to you. After all, they may be all false, every word that is in there I don't know; I am not sponsoring anything. I hope, how I wish, and how I do hope that what is in that affidavit is not true; I do hope for the honor of my country that the statements in that affidavit are false.

[fol. 2423] The Court: Very well, Mr. Phillips.

Mr. Phillips: But they are not false, and if your Honor finds that they are not false——

Mr. Saypol: There is something I would like to say.

The Court: I will hear Mr. Saypol.

Mr. Saypol: I feel that there is something I should say to complete the record. I submit to your Honor that the verity of what counsel has argued is as feigned as Sobell's defense, as counsel's seeming vehemence, as the nature of the defense, and the course that was pursued in an attack on the prosecutor. Two things I will concede: Mr. Phillips' statement that he is not familiar with the facts, and that is evident from my own experience in Mexico City where a witness for the airlines told me that this defendant and his wife had cashed in the return portions of their tickets to come back to this country. It was proven on the stand in the testimony of de Los Rios that this defendant was fleeing. de Los Rios testified that this defendnat told him he was fleeing from the American military authorities. He gave that deceptive reason that he didn't want to go into another war, although the proof was that he had never been in a war before. This very affidavit contains a falsehood in the statement that there was exhibited amongst other things to the Mexican authorities visas. Counsel ought to [fol. 2424] know that his client never went into Mexico with a visa. It is evident in the failure to disclose that when this defendant arrived at Laredo, and was taken into custody by American agents, that arrest was effected pursuant to a lawful warrant. It is evident in the fact that throughout this trial there sat in this courtroom the wife of the defendant, as to whom the affidavit states that she was present and we know that she was present from the time of

the arrest until the time the final act of deportation was effected at Laredo, and yet, not a word of testimony was heard from Mrs. Sobell.

[fol. 2425] The Court: I think I have enough.

Mr. Saypol: The whole affidavit portrays certainly that this defendant was not honorably escorted from Mexico but that literally he was kicked out as a deportee.

As a matter of law it has been held in the Dixon case in 73 Fed. Supp. that this Court will not be concerned with the circumstances under which a defendant before the Court is brought into the jurisdiction from a foreign place.

I submit that there is no merit to the motion. I submit that counsel even without full and frank disclosure by the defendant must have been fully aware of any facts concerning this subject.

The motion should be denied.

The Court: I don't think there is any merit whatsoever to the motion and I shall deny it.

Mr. Saypol: On the case now before the Court the Government first moves to adjourn the sentence of David Greenglass until tomorrow afternoon at 2 o'clock.

The Court: Is there anybody here on his behalf?

Mr. Fabricant: Your Honor, I believe Mr. Rogge is outside, and I don't believe that he knew that this motion was going to be made at this time.

Mr. Saypol: Indeed he did because I spoke with him on the telephone last night.

[fol. 2426] Mr. Fabricant: I don't think he knew that it was going to be made at this time.

The Court: Is he here in the building?

Mr. Fabricant: He is here in the building. I would like permission to call him.

The Court: Let us proceed with the rest of the sentences.

MOTION RE SENTENCES OF DEFENDANTS OTHER THAN ROSENBERGS AND SOBELL

Mr. Saypol: The Government moves the sentences of the remaining defendants who stand convicted.

The Court: Very well.

The Clerk: For sentence, Julius Rosenberg and Ethel Rosenberg.

Mr. E. H. Bloch: If the Court please, before we go through the proceedings usually taken in sentence, may we approach the bench?

The Court: Yes.

Mr. E. H. Bloch: I would like to discuss the matter with you. It has no relevancy to the sentence.

(Discussion at the bench between Court and counsel, off the record.)

The Court: All right, proceed.

Mr. Saypol: I have some observations I would like to make if the Court will allow me.

I consider it needless to review the evidence in this case. [fol. 2427] The Court has kept itself so fully informed and the charge of the Court is plain proof——

The Court: I think the defendants might be seated. Move some chairs over here until the actual sentence.

Mr. Saypol: The charge of the Court furnishes ample proof of its familiarity with the facts both as to the offense and as to the personal backgrounds of these defendants.

Chief Judge Learned Hand of our Court of Appeals in his opinion in United States v. Dennis in the course of discussing the clear and present danger doctrine reviewed present world conditions in these words, with this warning: "and we shall be silly dupes if we forget that again and again in the past 30 years, just such preparations in other countries have aided to supplant existing governments, when the time was right."

With that profound observation as a setting, I turn to various provisions in the Federal statutes which deal with the imposition of punishment, such as is provided in the statute before the Court.

In the case of murder, for instance, it is provided that whoever is guilty shall suffer death unless the jury qualifies its verdict by adding thereto the words without capital punishment, in which event he shall be sentenced, says the [fol. 2428] statute, to imprisonment for life.

In the case of rape, it is provided that a defendant shall suffer death or imprisonment for any term of years or for life.

In the case of kidnaping a convicted defendant shall be punished, one, by death if the verdict of the jury shall so recommend, or two, by imprisonment for any term of years, or for life if the death penalty is not imposed.

In the case of treason whoever is guilty of treason shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000.

The penalty for conspiracy to commit espionage, the crime for which these defendants stand convicted, since the first enactment of the law, particularly since 1917, provides that a convicted defendant shall be imprisoned not more than 20 years, but follows this proviso:

> "(b) whoever violates this law in time of war shall be punished by death or by imprisonment for not more than 30 years."

That is the applicable provision here.

Your Honor may observe now the two instances in which action by the jury may qualify the verdict. In the one in- [fol. 2429] stance, in the case of murder, in effect, the jury may recommend leniency. In the case of kidnaping, contrarywise, the jury may fix the grave penalty of death. Otherwise it is the sole prerogative of the Court.

The sentence to be imposed lies solely within the discretion of the trial court. The prosecutor's function is fulfilled when he has completed the case and the verdict of the jury rendered.

My statement reflects the views of the Department of Justice and the Attorney General and is a general statement of the background, of the import of the acts of these defendants and affects the question of how grave is the offense. In speaking, I do so with no sense of ominscience or of greater sagacity; nor in any spirit of malice, hatred or revenge.

The law under which the defendants were tried specifically omits reference to espionage in favor of a nation with whom this country is at war. It is clear that such an omission was conscious. The framers of the law understood the lesson of history that the uneasy ally of convenience of one day can really be preparing to be tomorrow's enemy. The Nazi-Soviet Pact of August, 1939, which un-

loosed the flood gates of World War II, is still fresh in our memory. What sort of allies were the Nazis and Russians [fol. 2430] at that time? When the Nazis attacked Russia, did Russia become an ally of ours by choice? The accidents of war indeed create strange and temporary bedfellows. The United States Supreme Court in the Gorin case, referring to the statute before the Court, said "No distinction is made between friend *of* enemy. Unhappily, the status of a foreign government may change."

World War II was hardly in its last stages when the question of whether who was really our ally and who perhaps might be the enemy, was already merging into the greatest issue of our age, namely, the struggle of our free society for survival against the vast forces of communist totalitarianism. It has been proven that these defendants were the agents of antagonistic forces which might well be preparing to overwhelm us. It is the elementary duty of a government to defend itself and its institutions. A society which does not defend itself is not worthy of survival. The espionage statute is designed as a weapon of defense of our freedom and thus it should be applied.

I have hesitated to translate these matters into a direct issue of life and death. It would be delusion indeed to believe that the war in Korea is anything but a war inspired by Russia. It is not an ad hominem appeal to suggest that [fol. 2431] it is inferable that young American lives are being daily sacrificed in Korea in defense of our way of life. These defendants gave their allegiance to forces which now are proven is allied to the real enemy in that fight. They used methods of espionage which traditionally called for severe punishment. The secrets they sought and secured were of immeasurable importance and significance. How could the life of a single individual engaged in such treasonable activities be weighed against the life of a single American soldier fighting in a distant land. The defendants were dedicated to the service of a system in which lives, their lives, are but ciphers. In terms of human life, these defendants have affected the lives, and perhaps the freedom, of whole generations of mankind. Any consideration for their personal interests necessarily in-

volves a hardening of the heart toward the fate and suffering of countless other human beings.

In the light of these considerations, is there room for compassion or mercy? Is there not an absolute duty to exercise the only weapons of defense available to our free judicial system which is here charged with acting in defense of our society? Leniency would be merely an invitation to increased activity by those dedicated to the concept that compassion is decadent and mercy an indication of weakness.

[fol. 2432] I point out to your Honor that the statute in question here in its applicable provisions contains two maxima, the death penalty and the maximum of not more than thirty years.

In the light of what I have said about other provisions of the law dealing with the imposition of the maximum penalty, frankly I am confused, as I think everybody else is, by the Congressional reasoning for not permitting the imposition of a maximum prison term of more than thirty years. But be that as it may, I am bound, as is the Court, by the provisons of law.

In that setting, considering the nature of the crime and the complete familiarity of the Court with every aspect of the case, I submit the matter for the consideration of the Court, unless the Court desires to hear me further.

The Court: Mr. Bloch.

Mr. E. H. Bloch: If the Court please, it has been a very heavy responsibility on the part of all those who have been connected with this case to see that the administration of justice was properly carried out, and that burden was carried by the Court, that burden was carried by the prosecution, and that burden fell especially upon the shoulders of defense counsel, and I believe that in this posture of the case, in retrospect, we can all say that we attempted to have this case tried as we expect criminal cases to be tried in [fol. 2433] this country; we tried to keep out extraneous issues; we tried to conduct ourselves as lawyers, and I know that the Court conducted itself as an American judge.

I think all of the defense counsel were doubly aware of the burden and heavy responsibility that were put upon their shoulders in this case, not only because of the serious

crime charged, but also the serious consequences that would flow from a conviction. But specifically because this case has become a celebrated case, and long before we walked into this courtroom it had been the subject of report and comment throughout the press of this country as well as the press of the entire world, I hope your Honor will understand that at this time as an officer of the Court I am bound by the jury's verdict, and I am therefore circumscribed in what I say to the Court, but indeed I would be remiss in my duty if I were not to tell the Court and the entire world that my clients, Julius Rosenberg and Ethel Rosenberg, have always maintained their innocence; they still maintain their innocence. And they have informed me no matter what, they will always maintain their innocence.

That makes my task here at this moment much more difficult. If these defendants came in crying *mea culpa* and showed that routine display of penitence that so many [fol. 2434] criminal defendants usually demonstrate to the Court on sentence, I could see things properly which would act as mitigation and which would move the Court, at least, in considering that state of mind in the imposition of sentence. I cannot say that. I am enjoined from saying that. I am saying to the Court also for what it is worth, as a personality, as an individual divorced from my responsibilities and duties as an attorney and officer of the Court, I have believed in my clients' innocence, I still believe in their innocence, and so far as I am concerned, I feel it my duty to continue as I have in the past to do everything to try to reveal the truth and the whole truth so that we can all say when this case is finally laid at rest at some time, everything has been done to see that proper justice has been effected.

Now notwithstanding these limitations and these circumscriptions under which I labor and suffer I would indeed be remiss in my duty to my clients and as an officer of the Court if I did not impart to the Court what I consider to be two salient features which I ask the Court to consider before it actually determines the sentence to be meted out to these defendants.

The evidence discloses in support of the charge that these defendants in the latter part of 1944 and during the year

1945 transmitted information relating to the defense of the [fol. 2435] United States to the Soviet Union, and the information which was charged as having been transmitted was information relating to the secret of the atom bomb. And I believe that it is because the atom bomb or some of the secrets was the subject matter of transmittal that this case assumes the importance that it did and does.

Now I would like to say to the Court that these acts were allegedly committeed in 1944 and 1945, and before I say what I am going to say, I want to say to the Court that I did not want to make a political speech and I am not going to make a political speech; in fact, I wanted to keep politics out of this case and I think with the Court's aid we have been able to keep it out up to now, but Mr. Saypol, and this is not by way of criticism, in his statement to the Court just now has introduced political considerations of a very weighty character, and I believe that I have the right to counter what Mr. Saypol has said about the gravity of this thing. The defendants are to be judged in this case not by what they may have intended today but what they may have intended in 1944 and 1945, and the quality of their act is to be taken if you will retrospectively and at that time, your Honor, the Soviet Union and the United States were allies, and you and I, as well as many other citizens of this country, as well as peoples all over the world, read the state-[fol. 2435a] ments of the greatest statesmen in the world at that time, in which they remarked that the Soviet Union was to be helped, was to be trusted, and was to be taken as a full-fledged ally.

[fol. 2436] I am not going to read excerpts of statements made by Winston Churchill or Franklin Delano Roosevelt or any of the great statemen of the Western World. I think that what I am saying can be accepted and will be accepted by every intelligent person who has read history and who remembers.

Now, I submit that to your Honor, because both in a quantitative and qualitative sense the acts of the defendant or defendants in a crime of this kind are vastly different, both in terms of motivation, motive and intent, when viewed as of 1944 or 1945, in contrast to how we may view a de-

fendant's act, considering the international situation, if viewed today.

I also would like to impress upon the Court that there has been no evidence here and no charge has ever been made that these defendants were venal or mercenary or that they did any of the acts charged in the indictment and substantiated, according to the prosecution, and to the jury's verdict at the time of trial, for money.

Now, your Honor, I would like the Court to ask itself this question—and I have to present a hypothet-cal state of facts: Assuming that the United States Government had found out in 1945 what they found out years later and which impelled them to bring these charges; one, would these defendants find themselves in a criminal court? And [fol. 2437] if, two, they found themselves as defendants, would there be the hullaballoo and hysteria which has accompanied the progress of this criminal procedure?

The Court: You overlooked one very salient feature, and that is that their activities didn't cease in 1945, but that there was evidence in the case of continued activity in espionage right on down, even during a period when it was then apparent to everybody that we were now dealing with a hostile nation.

Mr. E. H. Bloch: If the Court please, my recollection of the evidence is—and I am going to accept 1950, because all the evidence relating to 1950 dealt with flight——

The Court: But there was evidence, for example, in 1948, with Elitcher.

Mr. E. H. Bloch: 1948 was the later year. But in substance, your Honor, in substance this case is predicated upon the transmission of this A-bomb information in 1944 and 1945.

Now, I press that upon the Court, because I think it is an important element that should go into the deliberations of the Court in the imposition of sentence. I am not saying that when a man commits a criminal act he is to be condoned or his actions are to be condoned or he is to be excused because he lacks prescience and foresight of what the turns [fol. 2438] of history might bring about. I am not saying that at all. But I do say that it would be unduly harsh and unduly severe and unduly rigorous if an ideological ap-

proach, inspired by motives and feelings that were prevalent amongst great sections of the American population in 1944 and 1945, were translated, transmuted and transformed into something as heinous as Mr. Saypol has just stated and represented to the Court.

Now, I said, your Honor, that this case has assumed importance because of the element of the secrecy of the A-bomb. I suspect that when the average person hears "A-bomb" he shudders, he is in dread, he is in terror. I think much of the conscious or unconscious hysteria, subjectively speaking amongst people is due to the uncertainties as to whether or not they are going to live or die precisely because of the destructive potentialities of the A-bomb.

But sometimes, your Honor, a myth arises and sometimes, just as we try to elevate a person to dignity, we fall into hero worship, which distorts the person and his contributions out of all sane context. So the atom bomb has been so magnified and intensified that I think it is high time, and I think it is proper here, in terms of mitigation, to show to the Court, arguendo, but not conceding that these defendants [fol. 2439] did what they were accused of doing, that it is not the horrible thing that is represented to the Court.

Now, that may seem like a very startling statement, but your Honor, when I want to know the law I will come to you as an American judge, and when I want to know the scientific facts—and this is with all due deference in respect to Mr. Saypol—I will not come to Mr. Saypol but I will come to people like Dr. Oppenheimer and Dr. Urey and the scientists who work on the A-bomb. I think that is a fair statement, your Honor.

With your permission, your Honor, I would just like to read you two paragraphs from an article in Volume 56 of the Yale Law Journal, written by a former counsel of the Atomic Energy Commission, in which he reviews the history of the Espionage Act and the Atomic Energy Act, and in which he sets forth the prevailing view of scientists about what the A-bomb is, what it can do, and what kind of reliance can be placed upon it; and I say these things, your Honor, in context of the gravity of the offense and solely for that reason.

The Court: Well, I don't think that is a sound argument, because if you are going to say to me that "with the dropping of one bomb you can't conquer a nation," or "with the dropping of one bomb you can't kill ten million, but you may kill a hundred thousand, therefore, it isn't so [fol. 2440] grave," I must say that that is not a good argument.

Mr. E. H. Bloch: I am not going to say that. I don't intend to say that. But I will say to the Court that I think the Court would orientate its thinking along different lines if the transmission of the secret information here involved, some little piece of mechanism which, technically, under the statute, constituted a violation, but which could not bring about the destructive results. There is a difference, qualitatively, between one kind of article that is transmitted and another. No, I am not going to say that, your Honor, because I think it would be asinine, and I wouldn't stultify my intelligence or your intelligence if I would say that, but I would like to read you this.

The Court: All right, you may read it.

Mr. E. H. Bloch: And I may say, because I am not going to bombard your Honor with quotations from Dr. Urey or Dr. Oppenheimer, but I represent to the Court that what is said here is a fair resume or pithy concretization of their thoughts.

The Court: All right, read it, Mr. Bloch.

Mr. E. H. Bloch: (Reading):

"the general principles underlying all processes are likely to be widely known being derived usually from some discovery of basic science. For example, the successful gase-[fol. 2441] ous diffusion method of separating U-235 was based on identical principles enunciated by Lord Rayleigh as early as 1896. Thus, it is only the latest improvement or modification of an existing technique which can be held in camera, and then only for an indeterminate but usually brief period. Moreover, there is no likelihood whatever, with all our preeminence in technology, that the disparity between the level of our technical competence and that of other industrialized countries—at least half a dozen could be named (e.g. Great Britain, Canada, Russia, France, Sweden, Czecho-Slovakia)—is such that the latter would be

more than, at most, a few years behind us. Indeed, there is abundant evidence that other nations frequently develop technological methods and process distinctly superior to ours in a variety of fields.

"Even wholly new processes are likely to be already known or simultaneously discovered in other countries. For intellectual progress, especially in the sciences, is more or less uniform in countries which for generations have shared the same cultural climate. Only a small fragment of our scientific ideas are likely to be original, and that [fol. 2442] fragment is likely to be of little value by itself. One would not assume that biological evolution functions differently in Des Moines, Copenhagen and Moscow. The likelihood of marked differences in the evolution of scientific thought corresponding to geographical differences is equally small. Doubtless, some nations show special aptitudes in one field, some in another, but the community of science has long been international and the objects of its search are universal.

"Finally, the cosmopolitan character of the atomic energy project should not be forgotten. This work was the product of the scientific brains of several of the allied nations, and participating scientists inevitably acquired a considerable measure of the specialized and technical knowledge required to produce the bomb. It must be assumed that any 'secrets' known by these scientists, many of whom have returned to their own countries, have been disclosed to fellow-workers in nuclear physics in other parts of the world."

There is just one more paragraph.

The Court: None of them had returned in 1944 and 1945.

Mr. E. H. Bloch: That is true. The point I am trying [fol. 2442a] to make to the Court is that it was inevitable, just as the United States, our country, was the first to develop the know-how of the atomic bomb, because of our preeminence in technology.

[fol. 2443] The Court: Are you arguing, Mr. Bloch, that because it was inevitable that Russia would eventually be able to develop the atomic bomb, therefore it was perfectly proper for any American citizen to turn over any information which would help them develop it much sooner?

Mr. E. H. Bloch: I don't make any such assertion. I

say this: That it is wrong and it is criminal, under the Espionage Act, for any American to transmit information to any foreign power, whether it be Russia or England or France or any country that we can name. I do say, however, that let's not believe, as seems to be current in American thinking, that our entire security depends upon the atom bomb, a thought expressed by Mr. Saypol when he said that our boys are dying in Korea because of the Rosenbergs. I think that is a huge exaggeration.

The Court: I don't quite go along with the fact that it is that huge.

Mr. E. H. Bloch: I say that there is a myth about the monopoly of the bomb.

The Court: I think what it does do very definitely is that it changes a bit the respective powers of the nations, whether their political powers or otherwise, but the possession of the missile certainly does play a very important part in power politics.

[fol. 2444] Mr. E. H. Bloch: I say this, your Honor, if we are going to talk about power politics—I didn't want to say this, but I am going to say it—I hope that any sentence of this Court will not exacerbate detentions that exist in the world today. I believe that we can be more hopeful at this moment in the arena of international relations than ever before. We find strenuous efforts on the part of the greatest statesmen throughout the world to bring the Soviet Union and the United States into some orbit of understanding; and today, as in the last few weeks, our best brains are sitting with the best brains of the Soviet Union, in order to prepare an agenda to discuss outstanding differences.

Now, certainly that is not my business in this case to talk about too much, except as it impinges upon how your sentence may affect relations, precisely because this case is a celebrated case, and any sentence that your Honor imposes will be radioed throughout the world within three minutes and may be contstrude in a political way, when I know your Honor is merely trying to discharge his duty as a Court and impose a legal sentence.

The Court: I also have a duty, as I see it, whatever my sentence will be, to the American people, and I feel that duty very humbly and very definitely on my shoulders this morning.

[fol. 2445] Mr. E. H. Bloch: I realize the Court has a terrible responsibility, and I suppose it is the duty of the lawyers in this case, and I mean the prosecution as well as the defense, to try to aid the Court. How much we can aid the Court, I don't know. What I say to the Court may be of some help and may not be of some help, but as an officer of the Court, I am trying to lay before the Court certain factors, which I believe should enter into your deliberations.

I would just like to add one or two things, your Honor, and I am through:

In preparing for this trial, I ordered a certified copy of the sentence of Harry Gold, and in that transcript appears a very, very lengthy speech on behalf of that defendant by Mr. Hamilton, a member of the bar of the State of Pennsylvania, and, I understand, one of the most eminent practitioners in that part of the country; and he saved me a lot of trouble in research, in terms of finding analogies, which though not binding on the Court, because each case is separate and distinct, nevertheless may serve as guides, and I say to the Court that we have had situations in the United States within the last few years, where people like Tokyo Rose and Axis Sally, who were convicted of treason and who were aiding our enemy, Germany, during our war [fol. 2446] against Germany, I find that these people received terms of 10 to 15 years; and so I must say that I was extremely shocked, extremely shocked, despite everything that I have read in the newspapers, to hear Mr. Saypol ask for the severe penalty that he requested the Court to impose upon these defendants.

You know, your Honor, history turns. The Soviet Union was our ally in a fight against the common foe. Today, though we are not at war with the Soviet Union, the Soviet Union is regarded as an enemy to the United States. Who knows that but tomorrow the Soviet Union and the United States may not find some accord and find the basis for resolving their differences, so that the peoples of the world may be able to sit back a little bit and get that peace to which we all aspire.

I say to the Court that you should take all of the things I have said in consideration here. I am not going to review

the history of my clients' lives. Your Honor heard it from the witness stand and it would be a pure duplication.

I say this: One, my clients have stood up with that kind of courage that can only come from persons that are convinced of their innocence; and, number two, that the worst that can be said about them is that, idealogically, during the years when they were allied with the Soviet Union, they were extremely sympathetic to the Soviet Union.

[fol. 2447] Your Honor, I know you haven't been on the bench very long, but I know you have had a lot of experience in criminal law as a prosecutor, and I assume, a modicum of experience as a judge in criminal trials. I am going to ask you to say yourself, in your own conscience, your Honor, whether or not these people are the type of people that ordinarily come before you in a criminal case.

The Court: Have you made your reply on behalf of both defendants, Mr. Bloch?

Mr. E. H. Bloch: I am through, your Honor.

The Court: Is there anything defendants wish to say?

Defendant Julius Rosenberg: No, sir.

The Court: Do you care to say anything?

Defendant Ethel Rosenberg: No, sir.

SENTENCES

The Court: Because of the seriousness of this case and the lack of precedence, I have refrained from asking the Government for a recommendation. The responsibility is so great that I believe that the Court alone should assume this responsibility.

In view of the importance of the sentences I am about to impose, I believe it is my duty to give some explanation respecting them.

At the outset, I would like to say a few words about the law under which these defendants are about to be sen-

[fol. 2448] tenced.

It provides for the following punishment: If the espionage or the conspiracy to commit espionage is committed during the time of war, the punishment might be death or imprisonment for not more than 30 years. If the espionage or conspiracy to commit espionage is committed at any other time the maximum punishment is imprisonment for not more than 20 years.

This section, under which the defendants were prosecuted and convicted, was enacted in 1917, at which time the Russian international spy ring did not present the threat to all of us which it does *not*. Today, we know, if we believe the evidence, and the jury has found that the evidence is true, that it is a well-organized, well-directed ring, with tentacles which reach into the most vital places.

The incongruent penal provisions of the statute are spotlighted by the 20-year maximum imprisonment provision for commission of the offense of espionage during peacetime. I ask that some thought be given to that for a moment, for it most likely means that even spys are successful in the year 1951 in delivery to Russia or any foreign power our secrets concerning the newer type atom bombs, or even the H-bomb, the maximum punishment that any Court could impose in that situation would be 20 years. [fol. 2449] I, therefore, say that it is time for Congress to reexamine the penal provisions of the espionage statute.

In the case before me the conspiracy as alleged and proven commenced on or about June 6, 1944 at which time the country was at war. Overt acts were committed during the period of actual hostilities. Therefore, the maximum penalty is death or imprisonment for not more than 30 years.

Espionage, as viewed here today, does not reflect the courage of a Nathan Hale, risking his life in the service of his own country. It is rather a sordid, dirty work,—however idealistic are the rationalizations of the persons who engaged in it,—with but one paramount theme, the betrayal of one's own country.

Citizens of this country who betray their fellow-countrymen can be under none of the delusions about the benignity of Soviet power that they might have been prior to World War II. The nature of Russian terrorism is now self-evident. Idealism as a rationale dissolves.

The issue of punishment in this case is presented in a unique framework of history. It is so difficult to make people realize that this country is engaged in a life and death struggle with a completely different system. This [fol. 2450] struggle is not only manifested externally between these two forces but this case indicates quite clearly

that it also involves the employment by the enemy of secret as well as overt outspoken forces among our own people. All of our democratic institutions are, therefore, directly involved in this great conflict. I believe that never at any time in our history were we ever confronted to the same degree that we are today with such a challenge to our very existence. The atom bomb was unknown when the espionage statute was drafted. I emphasize this because we must realize that we are dealing with a missile of destruction which can wipe out millions of Americans.

The competitive advantage held by the United States in super-weapons has put a premium on the services of a new school of spies—the homegrown variety that places allegiance to a foreign power before loyalty to the United States. The punishment to be meted out in this case must therefore serve the maximum interest for the preservation of our society against these traitors in our midst.

It is ironic that the very country which these defendants betrayed and sought to destroy placed every safeguard around them for obtaining a fair and impartial trial, a trial which consumed three weeks in this court. I recall the defendant Julius Rosenberg testifying that our Ameri- [fol. 2451] can system of jurisprudence met with his approval and was preferred over Russian justice. Even the defendants realize,—by this admission,—that this type of trial would not have been afforded to them in Russia. Certainly, to a Russian national accused of a conspiracy to destroy Russia not one day would have been consumed in a trial. It is to America's credit that it took the pains and exerted the effort which it did in the trial of these defendants. Yet, they made a choice of devoting themselves to the Russian ideology of denial of God, denial of the sanctity of the individual and aggression against free men everywhere instead of serving the cause of liberty and freedom.

I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. The immediate family is brought to grief and when justice is meted out the chapter is closed. But in your case, I believe your conduct in putting into the hands of the Russians the

A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions [fol. 2452] more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country. No one can say that we do not live in a constant state of tension. We have evidence of your treachery all around us every day—for the civilian defense activities throughout the nation are aimed at preparing us for an atom bomb attack.

Nor can it be said in mitigation of the offense that the power which set the conspiracy in motion and profited from it was not openly hostile to the United States at the time of the conspiracy. If this was your excuse the error of your ways in setting yourselves above our properly constituted authorities and the decision of those authorities not to share the information with Russia must now be obvious.

The defendants are American citizens. They profited from our system of free higher education. I also assume that the basic Marxist goal of world revolution and the destruction of capitalism was well known to the defendants, if in fact not subscribed to by them, when they passed what they knew was this nation's most deadly and closely guarded secret weapon to Soviet agents.

In the light of this, I can only conclude that the defend- [fol. 2453] ants entered into this most serious conspiracy against their country with full realization of its implications. The statute of which the defendants at the bar stand convicted is clear. I have previously stated my view that the verdict of guilty was amply justified by the evidence. In the light of the circumstances, I feel that I must pass such sentence upon the principles in this diabolical conspiracy to destroy a God-fearing nation, which will demonstrate with finality that this nation's security must remain inviolate; that traffic in military secrets, whether promoted by slavish devotion to a foreign ideology or by a desire for monetary gains must cease.

The evidence indicated quite clearly that Julius Rosenberg was the prime mover in this conspiracy. However,

let no mistake be made about the role which his wife, Ethel Rosenberg, played in this conspiracy. Instead of deterring him from pursuing his ignoble cause, she encouraged and assisted the cause. She was a mature woman,—almost three years older than her husband and almost seven years older than her younger brother. She was a full-fledged partner in this crime.

Indeed the defendants Julius and Ethel Rosenberg placed their devotion to their cause above their own personal safety and were conscious that they were sacrificing their [fol. 2454] own children, should their misdeeds be detected —all of which did not deter them from pursuing their course. Love for their cause dominated their lives—it was even greater than their love for their children.

What I am about to say is not easy for me. I have deliberated for hours, days and nights. I have carefully weighed the evidence. Every nerve, every fibre of my body has been taxed. I am just as human as are the people who have given me the power to impose sentence. I am convinced beyond any doubt of your guilt. I have searched the records—I have searched my conscience—to find some reason for mercy—for it is only human to be merciful and it is natural to try to spare lives. I am convinced, however, that I would violate the solemn and sacred trust that the people of this land have placed in my hands were I to show leniency to the defendants Rosenberg.

It is not in my power, Julius and Ethel Rosenberg, to forgive you. Only the Lord can find mercy for what you have done.

The sentence of the Court upon Julius and Ethel Rosenberg is, for the crime for which you have been convicted, you are hereby sentenced to the punishment of death, and it is ordered upon some day within the week beginning with [fol. 2455] Monday, May 21st, you shall be executed according to law.

We will take a short recess.

(Short recess.)

The Court: Mr. Saypol, do you want to take up the matter of punishment of the defendant Greenglass?

Mr. Saypol: If it is agreeable, I have made a statement to the Court and I have suggested that the sentence of

Greenglass be adjourned to tomorrow afternoon at 2 o'clock.

Mr. Rogge: If your Honor please, as counsel for David Greenglass, I am requested that it be adjourned to next week, and I will tell you why. I should like to have an opportunity, as counsel—I think it is my duty—to prepare a plea for your Honor's consideration in passing sentence, which will involve, not only matters which have come to your Honor's knowledge, but additional matters. I did not learn of the fact that the sentencing in this case had been set for today, until I read it in the New York Times, in Washington, D. C. on Sunday, when I was there preparing for trial of a case that went on trial on Monday.

The Court: I said here when the verdict came back that I would sentence all defendants Thursday morning, April 5th.

[fol. 2456] Mr. Rogge: If your Honor please, I did not have notification until Sunday. I did not get back to this city until last evening. I represent a witness who has been subpoenaed for 2 o'clock this afternoon before the Sub-Committee on Internal Security of the Committee on the Judiciary, known as the "McCarran Committee," which is set for 2 o'clock in this city, this afternoon, a hearing that I am sure will take all afternoon and may go until tomorrow, and I would like a day's time in which to confer with David Greenglass and his wife, Ruth, in order to prepare my plea before your Honor. I think, as his counsel, it is my duty to do that and I can't get at it until Monday of this next week.

[fol. 2457] The Court: Mr. Rogge, I would like to accommodate you, but I just feel that I can't. I want to dispose of this case. I would have preferred to dispose of the Greenglass sentence today, but I understand very well there would have been certain situations involved, that with his presence in court at the time the other defendants were here, that would inflict upon him more punishment than should be inflicted, so I decided to have it go over for a day. But I want to dispose of it. I believe, in the interests of your client, it should be disposed of. I am sure that you are fully familiar with the facts, because you have lived with his case now for almost a year, and I am going to set it for

tomorrow afternoon, at 2 o'clock, and I almost think that it is of such importance that perhaps the Committee, before which you are supposed to make an appearance, might consider that you want to do some work on this and perhaps postpone the hearing. I don't suggest it. I just throw that out as a thought, but I do think that it is of such importance that I would like to dispose of it tomorrow.

Mr. Rogge: Well, here is my situation on that: They have apparently had a sub-committee meeting here for this afternoon. I am prepared to go ahead in that case and I don't like to say to the sub-committee, "Will you come next week," because I assume they have come up here [fol. 2458] from Washington for this purpose.

The Court: I understand that. I should say, it doesn't require much work on your behalf to be ready tomorrow. I don't think that any long statement should be made, because no one knows better than I do the part that Mr. Greenglass played in this case. I saw the witness on the stand, I heard him testify. I know his background. There is very little more that can be added.

Mr. Rogge: Well, I wanted to stress some things that hadn't been stressed, his youth, some of his fuzzy thinking.

The Court: I think you can do that.

Mr. Rogge: The courage that was involved in not committing the second error. I wanted to explain those a little to your Honor. I know you have gotton part of the picture, but I thought there was more of it which I should present to you.

The Court: I think you can go right ahead and do it. But they are things I have in mind. I know it required a great deal of courage. The jury believed it. I believed it. I thought he was telling a credible story. It is a most unusual situation.

Mr. Rogge: It is the toughest I have ever been in, Judge.

The Court: A brother testifying against his sister.

[fol. 2459] I suppose that he did a lot of soul-searching and came to the conclusion that he was doing to what is bigger than his relationship with his sister.

Mr. Rogge: He made up his mind that he was not going to commit a second error, and I want to explain—I can see that your Honor is pretty familiar with the picture.

The Court: I am prepared to go ahead with it tomorrow. I am going to set it at tomorrow at 2 o'clock.

Mr. Rogge: Thank you, your Honor.

The Clerk: For sentence, Morton Sobell.

Mr. Phillips: Your Honor, I would like to say a word or two.

The Court: Is there anything the Government wants to say?

Mr. Saypol: I think, equally, the Court is familiar with the facts, so that it requires no discourse on my part.

The Court: All right.

Mr. Phillips: There are one or two items of fact that I wish to draw to the Court's attention for consideration in imposing a penalty in this case on Morton Sobell.

In the first place I ask your Honor to note that there is no testimony in the case that Sobell did actually transmit any information to be transmitted to any foreign power; [fol. 2460] at best, or at worst, there might be a scintilla to indicate that he was agreeable to do so or that he arranged to do so. I don't admit that, that the testimony if viewed in the light of the adjoining testimony really points in that direction, but that is the worst that anybody can hold in this case against Sobel.

In the indictment no overt act is charged against him; scarcely any has been proved in the course of the trial, and certainly none in connection with the type of information, namely, the transmission of the secret of the atom bomb is present throughout the case as chargeable to Sobell.

And finally I want to draw your Honor's attention to the peculiar working of the statute in relation to punishment. You will notice that the statute does not provide for a minimum. The statute says not to exceed thirty years and also not to exceed death. But the main thing is why is the statute worded to leave no minimum? Obviously it is a directive to the Court whose duty it is and obligation, sacred trust, to impose sentence. Now there are degrees of transmission of information. There are degrees of gravity in the transmission of information. There are degrees of gravity as to the nature of the world relationship in the transmission [fol. 2461] of information. In other words, the fact that the statute does not prescribe a minimum is almost like saying to a court, "You have the privilege to impose almost no

sentence, or to let a defendant go on his own recognizance, or such a small sentence, fair." In other words, I do wish your Honor to take into consideration the wording of the statute. If there is any case I can think of of transmission of information to a foreign power on matters relating to the national defense which would point to the exercise by the Court of that very discretion which the language of the statute gives it, it seems to me to be the case of Sobell, and I certainly bespeak for him your Honor's utmost consideration.

The Court: Is there anything the defendant wants to say?

(No response.)

The Court: While I have not the slightest sympathy for you or any of your associates, as a judge, I must be objective in the examination of the evidence in this case. I do not for a moment doubt that you were engaged in espionage activities; however, the evidence in the case did not point to any activity on your part in connection with the atom bomb project. I cannot be moved by hysteria or motivated by a desire to do the popular thing. I must do justice according [fol. 2462] to the evidence in this case. There isn't any doubt about your guilt, but I must recognize the lesser degree of your implication in this offense.

I, therefore, sentence you to the maximum prison term provided by statute, to wit, thirty years.

While it may be gratuitous on my part, I at this point note my recommendation against parole.

The Court will stand adojurned.

Mr. Phillips: Before the Court adjourns, are the months already served taken into consideration?

The Court: No, they are not, but I will have to so sign the judgment. They have to be so considered.

(Adjourned to April 6, 1951, 2 o'clock p. m.)

[fol. 2463] New York, April 6, 1951,
2:00 o'clock p.m.

PROCEEDINGS RE SENTENCE OF DAVID GREENGLASS

The Clerk: For sentence, David Greenglass.
Mr. Saypol: Government is ready to proceed.
The Court: Defense is ready?
Mr. Rogge: Yes, I shall proceed, if your Honor please.
The Court: All right, very well.
Mr. Saypol: May I proceed, if the Court please?
The Court: Yes.

Mr. Saypol: I say with all humility that the sentences imposed yesterday are substantially in accord with my views as I would have expressed them if the Court had accepted my offer to do so at the conclusion of my presentation.

I take it, unless the Court indicates otherwise, that in this case, peculiarly, the Court will perhaps solicit my recommendation. I say "peculiarly," in the sense that this defendant has been a witness.

With all due modesty, I feel free to refer to myself as somewhat experienced in prosecution. More sentence rec- [fol. 2464] ommendations for presentation to sentencing judges are resolved by me than anywhere else perhaps in the entire system of Federal Courts.

In the almost six years of my association with this office of United States Attorney, I have learned much of the need for weighing the conflicting factors, the redemption of justice, on the one hand, in the light of the facts of the particular crime, and on the other, the rights and the welfare of the defendant and his family, as human beings.

The job is not easy. That is why, for one thing, I can appreciate the wisdom of your Honor's disposition, as reflected by your sentences yesterday. Moreover, I think it is appropriate to say that you have again inspired us, who are concerned most intimately with the preparation and presentation of evidence. We have from you, your Honor, the profound assurance that our conduct has been right.

This courtroom, its atmosphere characteristic of the somber dignity of the great system of Federal Courts, their fundamental regard for the dignity of the human being,

and his rights according to our legal system and simultaneously cognizant of the need for swift, forceful, undeviating and relentless prosecution, this courtroom has uniquely been the setting for important trials. It was here [fol. 2465] that the leaders of the Communist Party were convicted before Judge Medina. It was here that the first of the cases in this business of espionage was tried and the defendants convicted before your Honor. I refer, of course, to the trials of Abraham Brothman and Miriam Moskowitz. It was here that William W. Remington was tried and convicted before Judge Noonan and, finally, this case.

Throughout those cases there ran a pattern, there were witnesses common to more than one of some of them. I, my colleagues here, had some parts in all of them. In experience, then, in association and by observation, there is a duty on the prosecutor, like the importance of the responsibility of the judge, who has the ultimate duty to impose sentence, I say, the prosecutor, too has grave problems. These, however, may arise before and also in the course of the trial. Not the least significant in the development of a case is the identity, the place in the case of a participant, of an accomplice. Frequently, there is no free choice of witnesses to the prosecutor when probing for proof of a crime. We know that the participants in crime are in point of law ideally the best witnesses. Courts have observed in the evolution of the rule as to competency of accomplice testimony that crimes usually are not committed [fol. 2466] by clerics or barristers or medics. We have heard it said that it takes a thief to catch a thief. That is when the prosecutor is faced with decisions. Those in the crime, the contrite, the penitent, the remorseful, can, in some measure, atone for their sins. To that extent, in the solemn exercise of his obligation on his conscience must the prosecutor decide whom and how he will prosecute as affected by a willingness on the part of the culprit to go further in exposing the criminality.

As long ago as 1878 the Supreme Court of the United States stated the rule:

> "Accomplices in guilt, not previously convicted of an infamous crime, when separately tried are competent witnesses for or against each other; and the uni-

versal usage is that such a party, if called and examined by the public prosecutor on the trial of his associates in guilt, will not be prosecuted for the same offense, provided it appears that he acted in good faith and that he testified fully and fairly.

"Where the case is not within any statute, the general rule is that if an accomplice, when examined as a witness by the public prosecutor, discloses fully and [fol. 2467] fairly the guilt of himself and his associates, he will not be prosecuted for the offense disclosed.

"Consequently it is regarded as the province of the public prosecutor and not of the court to determine whether or not an accomplice, who is willing to criminate himself and his associates in guilt, shall be called and examined for the State.

"Of all others, the prosecutor is best qualified to determine that question, as he alone is supposed to know what other evidence can be adduced to prove the criminal charge."

It was evident to me at the outset, and the sequence of events has proven to my satisfaction, and the judgment of my colleagues has likewise tended toward that satisfaction, that this case could not have been proven without the information supplied by such persons as Max Elitcher, Harry Gold, Ruth Greenglass and the defendant David Greenglass. My choice as to those who should be prosecuted need not be discussed as to the first three. All however confirmed the facts which we had, as they had been developed over a period of time by painstaking digging and digging and digging by the Federal Bureau of Investigation.

When David Greenglass was arrested after the first in- [fol. 2468] dictment in the State of New Mexico, I remember well how at his arraignment before the Commissioner in this district Mr. Rogge protested his innocence. Through Ruth Greenglass, his wife, came the subsequent recantation of those protestations, their cooperation and the disclosure of the facts by both of them. They were told before that their conduct in these disclosures in no way implied any commitment to them regarding the prosecution of either.

The effect of their behavior as is now evident to all is reflected by the verdict. It was my duty to decide who should be considered for indictment by the grand jury. I am morally satisfied in my decision.

There now is presented the question of punishment as to David Greenglass. His offense was grave beyond any dispute. He carries forever a moral and a legal burden. The unusual factors of the relationships between this defendant and the others, the part played by each in the commission of the crime and now the part played in disclosure, the first part played in cooperation, the latter in direct conflict, those are engraved so deeply as never to be erased. The fate of two defendants yesterday could easily have been his. But in the language of the Ford case, there is in him now an equitable right to mercy. As forceful as your Honor has [fol. 2469] been in the case of the other defendants, you should now be inclined toward a demonstration of the broad tolerance of the Court in the presence of penitence, contriteness, remorse and belated truth.

If the Court should adopt my suggestion, and my observations, it is my view that as universally as has been accepted the effect of the judgments of yesterday, so universally will such judgment in mercy portray the wisdom, the strength, the justice of your Honor.

I take it that I may offer my recommendation?

The Court: Yes.

Mr. Saypol: I recommend that the defendant be imprisoned for a term of 15 years.

Mr. Rogge: May it please the Court, Mr. Saypol and I disagree as to what mercy means in this case. I too have had experience in prosecuting and I have also had experience in assisting in investigative agencies, especially the FBI in former years. And I can say to your Honor that in my opinion a sentence of the severity of 15 years will remove any possibility of any good that could come out of a sentence in this case. If the Government wants help it must give help. If it wants people in the position of David Greenglass to come forward and cooperate, it must give [fol. 2470] him a pat on the back. It must give example to which investigative agencies can point, and say "Now, if you will be helpful, the Government will be helpful."

I say to your Honor more important than any particular sentence that you can impose is that of finding out what the rest of the story was. The Government doesn't have the whole story. That is the number one consideration.

Now investigative agencies in trying to get at the rest of that story are going to be helped if they can go to people from whom they want information and say "Now if you cooperate, that, under our system, will entitle you to a great amount of consideration." But if sentences are handed out of this severity—for example, the defendant Gold got 30 years; so did the defendant Sobell—I mean, cooperating witnesses like Gold could say "What is the use." The same thing is true of a sentence of 15 years.

I say to your Honor that more important than the amount of sentence is to show to people that under our system if they are repentant, if they will cooperate, they will be given consideration for that.

The Court: Where do you draw the line, Mr. Rogge?

Mr. Rogge: At what, if your Honor please?

[fol. 2471] The Court: At consideration, where you are dealing with a penalty that calls for possible death and also for maximum imprisonment of 30 years?

Mr. Rogge: I will say to your Honor under the circumstances of this case which with your Honor's permission I want to refer, I say to your Honor that any sentence in excess of five years is of such severity that it defeats any good purpose that a sentence in this case could have.

And I want to call your Honor's attention to some of those circumstances. David and Ruth Greenglass grew up on the Lower East Side around the corner from each other. They got married on November 29, 1942. David at the time was 20 and Ruth was 18. David's mother went along because David was under age, to get the marriage license. They have two children, Steven four and a half and Barbara ten months.

There was an attempted indoctrination in this case but it was never successful. That attempted indoctrination in the case of David, a well-intentioned, impressionable lad, began at the age of 13 when Julius brought literature, books and chemical sets to the home for David. He flattered him; David was going to be a scientist.

The attempted indoctrination of Ruth began at the age of 18 after she married David. Ethel sent someone to try [fol. 2472] to make a conference, but in both these instances, although there were these unfavorable circumstances in their surrounding, in both of these instances the indoctrination never really succeeded. David and Ruth Greenglass, yes, wanted to see a better world, but they did not want to see a Communist one.

Now, a few months after David's marriage—three weeks after he was married he went into the Army. Now, he did not seek Los Alamos. The Government sent him there. And although David did make a misstep, he did not persist in it; he got out of it and he never did like it.

[fol. 2473] Julius wanted him to keep on at Los Alamos. He refused. David was given an offer to—and I think it was at a rather high salary—to go for six months on an atom bomb test out of the country. Julius wanted him to do it. He refused. Julius made him an offer to go to school for four years at $100. a week and maintenance, something which very much appealed to David at that time more than anything else. David refused him. Julius offered him an apartment rent free. David and Ruth refused. Julius in this last year gave David $5,000. to flee the country. David refused to do so.

Now, the misstep was only for a small period and David and Ruth never liked it; and I want to call your Honor's attention to the fact that David's fuzzy thinking occurred at a time when Russia was a war-time ally, and many other people among us were engaged in fuzzy thinking about the Soviet Union at that time. As a matter of fact, it continued for most of us until 1948. The thinking was different at that time. It is really hard to duplicate.

I can call your Honor's attention, for instance, to a column of November 22nd of last year, by Mark Sullivan, a conservative writer, in a column in the Herald Tribune, in which he said:

> "In 1945 and during some years before, our people were asked to love and help Russia as a friend and [fol. 2474] ally and to hate and destroy Germany as an enemy."

We have always had a live and let live attitude toward the world in this country. We had it and we still have it for the Russian people.

Now, this live and let live attitude for——

The Court: I want to make sure that I understand you. You are not condoning, are you, you are not condoning by reading a passage, which you have, in Mr. Sullivan's column, that because that type of thinking had been incurred in 1945 or 1944, that any individual in America had a right to set himself above his Government and determine what type of information should be furnished to Russia?

Mr. Rogge: I am not condoning that in the slightest, your Honor.

The Court: I wanted to make certain of that.

Mr. Rogge: But I am saying that there was an atmosphere at that time. General MacArthur, in one of those years, he sent a telegram, and it was a warm telegram, it was an expansive telegram, of congratulations to the Red Army.

Judge Learned Hand was a member of the National Council of American-Soviet Friendship.

President Roosevelt made many speeches, praising the [fol. 2475] Russians.

Borough President Lyons, up in the Bronx, believe it or not, declared a "Red Army Day."

I mean, we, in our attitude of live and let live—it went so far that if people such as I have mentioned, Franklin Roosevelt, MacArthur, Judge Learned Hand, if they could express in this way a live and let live attitude, when you tie that to David's fuzzy thinking, to the fact that persons older than he, Julius and Ethel, Julius whom he wrongly admired, said, "Look, we have to help this ally," I say, you have to take those circumstances without condoning it.

The Court: Well, let's get one thing clear. Russia didn't come to our aid in this war. We came to Russia's aid.

Mr. Rogge: That is quite true, Judge, but the point I am making is this: That many people far wiser than David Greenglass spoke in terms of aid and admiration for the Russians, and I say that——

The Court: I am getting a bit confused by this argument, Mr. Rogge. I want to make certain that you are not con-

doning any thinking on the part of anybody, even at that time, who would, because of his inclination to be of assistance to Russia, would be able to convince himself or herself of the fact that they should, therefore, determine for [fol. 2476] himself or herself how much aid should be given Russia.

Mr. Rogge: I am not in the slightest condoning that, Judge, by nothing that I say. But I am saying that if people such as I have mentioned, who were far wiser than David Greenglass, could talk in such terms with reference to Russia, that when you take David Greenglass, with the seduction, really, of an older person like Julius, for whom he had admiration, who talked in the same terms and said, "We have to help an ally," I am saying that that is a circumstance that your Honor should take into consideration, along with the fact that even at the time they were doing it, they didn't feel right about it, and they did get out of it, judge, and I am saying that all these things have to be taken into consideration.

I say that even with the fuzzy thinking that was going about, even with the seduction that was held out by an older person, by older persons, for whom David Greenglass had admiration, even so, he still had misgivings about it. He admired his brother-in-law; he wanted to do what his brother-in-law felt right, and yet he had doubts.

As Ruth put it on the witness stand, almost at the very beginning, they realized that the question was too big for them to decide. That is the point that your Honor was just making. Ruth Greenglass herself said they had these [fol. 2477] misgivings; this question was too big for them to decide, but they were induced into this; they never liked it; they were in only for a short period, and then they got out and refused to go along with any more of it.

Then there was the testimony of David Greenglass, when the FBI came to him in February of 1950, and asked him some general questions, he almost told them then; he wanted to, as he put it in his testimony, he was on the verge of telling them.

Now, with this background, what I do want to emphasize is that David did cooperate with the Government and almost from the outset. It took courage on David's part to con-

fess his mistake, but he did and he did it fully. He even elaborated on it. I don't have to emphasize the point of David's courage, because your Honor observed him here in the courtroom and I think your Honor is aware of it.

Now, not only did the Government have from David the full and complete story as he knew it, but I think it is also fair to say that his description of proposed methods of escape probably helped the Government to apprehend the defendant Sobell.

I think it is also not amiss to mention that in this case I represented at least six people. I represented not only [fol. 2478] David and his wife, Ruth, but I represented Max Elitcher, the first witness for the Government, and his wife, Elaine. I represented Louis Abel and his wife, Dorothy Abel, and also on the witness list was my secretary, and she was also a witness, Helen Pagano.

I think it is also relevant to point out that there were other witnesses in this case who were located as a result of the cooperation of David and Ruth Greenglass. I can point to Mrs. Evelyn Cox; I can point to Dr. Bernhard. There were still others on the witness list who were not called, and still others who may be witnesses in other cases. You couldn't get more cooperation, courageous cooperation, than this.

The Court: I must say, Mr. Rogge, that I think that you have done service to the profession and to the country in assisting these clients who came to your office to think clearly on the subject, because it is my opinion that a lawyer plays a vital part in clarifying in a witness's or defendant's mind the proper thinking on the subject, and whether or not the attorneys who represented the defendants who took the stand were ever given that opportunity or not, I don't know, but I am firmly of the opinion that it is the duty of a lawyer to ascertain the truth and then to give the best type of advice in his client's interest, and I believe you did it.

[fol. 2479] Mr. Rogge: I think I did, too, if your Honor please, and I thank you for your Honor's statement.

Now, I want to ask this: I had to have clients, however, who were not fanatics. In other words, I had people who were people without malice, who were people who were

well-intentioned. The most you can say about them is that they were a little fuzzy in their thinking, and right from the outset I had people in Ruth and David Greenglass who were solid enough that they really—I mean, their impulse was to come forward and help the Government, and that is what they did, Judge; and that in the light of all this background I want to urge upon your Honor to give consideration to, not only in the light of those circumstances, but also this: I want to emphasize that I think more important than the sentences in a particular case, here for instance, is getting at the rest of the espionage story. Therefore, I think people in David's position who were misled into a misstep, but who never really had their hearts in it, and he didn't, they must be given full and ample consideration if they repent. As I said, if the Government wants help, it must give help. If the Government wants help, if for our own security reasons, for instance, we would like to find out what the full espionage story was, we must give full and ample help to people like David Greenglass, to encourage still others to [fol. 2480] come forward and help the Government; and I say to your Honor that investigative agencies, when they talk to people who may give them information, have to be able to say to them, "Under our system, if you will be helpful, there will be this large measure of consideration for you," and fifteen years is not that measure of consideration. I think what that will do will make people shrug and say, "Well, what's the use?" And in this way make it that much more difficult for investigative agencies in this particular situation to do what I think is an even more important job, find out what the rest of the story is.

In this connection I want to call your Honor's attention to a paragraph from an editorial from the New York Daily Mirror for last Tuesday, with reference to Larry Parks. They ended with this:

> "In addition to this emotional factor there is a practical one—that it is more costly to confess than not to confess. Those who want to come clean will be afraid. We must not make them afraid. Larry Parks has set a pattern for others in Hollywood. Let him have a square deal."

I say, let David Greenglass have a square deal. Let's give him a pat on the back, so that it will be an encouragement to others to come forward and aid these investigative [fol. 2481] agencies in getting the rest of the story.

Now, I ask your Honor, what is the purpose of a sentence? If its purpose is as a deterrent it is going to have no effect as far as fanatics are concerned. I mean, if there are twisted or fanatic individuals with rebellion in their hearts, they are going to betray their country no matter what the sentences are. They may even laugh at the sentence. So far as a sentence in a case acting as a deterrent, it is going to have no effect on a fanatic. But on a person like David, who is not a fanatic, and on others who have been led by fuzzy thinking into a misstep, a heavy sentence is going to defeat the very purpose that investigative agencies would try to accomplish.

Well, what is another purpose of a sentence? Punitive, punishment. Well, we have in David Greenglass one who came forward almost from the beginning and told the Government what happened. He should be praised, not punished.

Now, another possible purpose of a sentence could be rehabilitation. A sentence is not going to act that way on David Greenglass, who never did like this thing and who was out of — even before he came to me. But I say to your Honor that a light sentence in this case could serve two major purposes. A sentence giving full consideration to the help that David Greenglass gave would be an encour- [fol. 2482] agement to others to come forward and likewise help the Government, and in this way, in this particular situation, maybe the investigative agencies would be able to uncover the rest of the espionage story. But in order to act as that encouragement, the sentence must be light. Anything in excess of five years would be of such severity that it would defeat any good purposes that could come of a sentence.

Now, a sentence could also serve a second purpose. I think a light sentence could demonstrate to our people here that we are different from the authoritarian East, that we do have regard for the individual and his human dignity; that with us he is not a means, he is an end in himself. We

have shown this regard for the dignity of human beings in other ways. I had a case in Washington only the other day that involved a claim of privilege under the Fifth Amendment. I have had occasion, incidentally, in the Eastern countries themselves, in Warsaw, to point—I haven't said "Everything that we have over here is better," but I have said, "That in our regard for the dignity of the individual, you could copy from us," and I have taken up some of their purge trials; I took up specifically the Reich case and the alleged confessions, and I said, "With us, we throw out confessions like that. We not only have the right to speak, we [fol. 2483] have got the right to remain silent. We have this regard for the dignity of individual human beings. That is our Anglo-American tradition."

Now, if we are going to have regard for the dignity of the individual and for all these other circumstances, we have an occasion here to show it, if your Honor please. As a matter of fact, when you go by comparison—and these were pointed out yesterday, and I won't repeat them—even in the cases of Axis Sally and Tokyo Rose, the sentences were from ten to fifteen years.

I even saw a newspaper item not long ago of a bunch of sentences in Czechoslovakia for alleged spying; they ran from four to thirteen years.

I do say that a sentence of such severity as fifteen years, as the Government proposes here, or thirty years, as in the case of Gold, just defeats any good that can come of this.

Furthermore, I say to your Honor that we have so much regard for the dignity of the individual and for individual cases and for repenting individuals, that there are even instances of where, after sentence—I can even give your Honor a Court of Appeals citation—where a court commented on it—where even after sentence, if it was within the sixty-day period, that there was repentance and coming [fol. 2484] forward and helping the Government, even at that late date a court gave consideration to that.

Now, I say that if a court, in circumstances even at that late date—and it has occurred that a court, even after sentence imposed, if the individual came forward and said, "We will help the Government, even at that late date, it was given consideration."

I say, how much more should it be given consideration, where, in the case of David Greenglass, almost from the outset he said to the Government, "I will tell you what happened."

Now, I have a couple of other points I want to make in a more general way.

I think that we may be overestimating how much help came from any information that was transmitted by David Greenglass. As a matter of fact, we are a country that talks a great deal, if your Honor please, and I think that the Russians could have gotten as much, and some instances more, information out of our public statements and out of what appears in our publications. I have a recollection of one or two being withdrawn, but I have an item here from the New York Journal-American, Washington Bureau, of a couple of weeks ago—no, this is longer; this is January, January 31st. It begins with this:

> [fol. 2485] "A representative of the Russian news agency Tass sat in a conference yesterday with top officials of the Atomic Energy Commission to hear vital details of amazing advance in firing the atomic weapon."

I don't think the Russians really have to go through all the trouble that they do if they just read the things that come out in our publications, I mean, we tell most of the things that we are doing.

The Court: Well, I don't think there is much point to that argument, Mr. Rogge, because your client testified—I believe he told the truth in every respect—testified to the vital character of the information which he gave to Julius Rosenberg; and, if you will recall, Dr. Koski and Mr. Derry took the stand, two experts, two scientists—as a matter of fact, Dr. Koski is, anyway—and attested to the tremendous importance of this information.

[fol. 2486] Mr. Rogge: I have one last topic, if your Honor please, and that is this: Your Honor referred to the power struggle between the Soviet Union and the United States, and that is just what it is. But I think that more, much more of our difficulties come not from what happened

as the result of what David Greenglass did, but as the result of the sudden way in which we rushed into disarmament. As a matter of fact, this was pointed out very well by an article by Paul Gallico in the Pictorial Review of March 11, 1951. He is a little facetious about it, but his point is a sound one, and I would like to read a paragraph from this, two paragraphs:

> " would you have done it any better if you had been in charge on the day the Germans and later the Japanese folded up and hollered Uncle?
>
> "Would you have turned a deaf ear to the cries of 'Bring the boys back home!'? To have kept the boys over there once the shooting was over called for vision, statesmanship and cast iron nerve. Have you got it? Have I? Has anyone?
>
> "The Administration made so many mistakes all along the line that it isn't easy to settle on any one that leads us directly to the fix we are in today, but that business of bringing the boys home and disbanding [fol. 2487] our Army, Navy and Air Force sure was one of the big ones. If the boys stay over there with their guns loaded and don't depart until the Russ likewise withdraws and we don't demobilize until same said Russ also shucks the hardware, there would be peace, beautiful peace. No Berlin airlift, no Balkan Communist satellites, no Korea, no trouble.
>
> "But who is that smart when you've just won a war, when the newspapers tell of Americans and Russians fraternizing on the Elbe, drinking toasts in vodka to celebrate the victory and the wimmen folk send up a yawp to bring home their men? What? You say you would get in the way of a dame when she wants her man back home? Brother, that I would wish to see. And you expected Harry, a guy just like the rest of us, to be that savvy and that tough?"

Our great difficulty lies in the fact that we demobilized so soon, and on top of it, many of our leaders in industry and finance and Government try to build up an indiscriminate fear of something they called "communism" but not because they were really preparing to meet an aggression,

they did this for domestic purposes. They used the cold war for domestic purposes, to try to silence those who would urge needed reforms, to try to make up for the fact that we have a faulty system of distribution, so that we have a [fol. 2488] surplus—we have got the most effective industrial machine in the world, but we have got a bottleneck at the point of distribution, so rather than solve that, they wanted to put this surplus into armament, not because they thought we really needed it, so there was a three fold tragedy here. For one thing we were not really preparing to meet aggression. For another, the American people were deceived into thinking we were more ready than we really were; and in the third place, we were not actually trying in a beneficial way to solve our domestic problems.

What these leaders did was to engage in much talk, but little effective action. What we needed instead was just the opposite. We should, on the one hand, have quietly built up our own strength and that of our responsible allies, and, on the other hand, made a genuine effort to solve our domestic problems, and then at the same time, while being strong, we could have kept on trying to negotiate. But our government wasn't wise enough to do that and our real difficulty lies in the fact that we disarmed ourselves so soon, and I urge that as another consideration of this case, so that we get this thing in perspective and don't try to put all our guilt on a person like David Greenglass, who, in a time of fuzzy thinking, also engaged in fuzzy thinking and was [fol. 2489] caught in a set of bad circumstances and allowed himself to be persuaded by someone, for whom he mistakenly had admiration.

You have here an individual who is wholly without malice, if your Honor please. I mean, you have someone—I know that he not only gave blood during the second World War, but I see he has an emblem on his coat today that he gave blood recently. I mean, this is the kind of a man you have, a well-intentioned person, without malice, who didn't think too clearly, who came up under rather rough circumstances.

I saw a cold water flat for the first time on the Lower East Side, and when I saw what some of the conditions were there, I realize that I have had rather a coddled existence,

if your Honor please, in spite of the fact that I was born and raised on a farm.

Under these adverse circumstances, the combination of them, David, during a brief period of time, was induced into a misstep, but he never liked it, Judge, he got out of it; he refused to stay on at Los Alamos; he refused to let Julius send him to school; he refused to take the $5,000, and flee the country. He really wanted to come to the Government in a repentant way and say, "I have made a mistake. Let me unburden myself," and that is what he did; and I want to emphasize in concluding, if your Honor please, that [fol. 2490] more important than the sentence that you impose on this defendant in this particular case, is to give a pat on the back where there has been this kind of courageous cooperation, so that investigative agencies in this particular situation, for instance—or I am sure they would welcome this help—so that investigative agencies, in trying to find out the rest of the story, don't have to point to these severe sentences, but comport to people who are just on the brink of cooperating—they want to—but they can say to such people, "Look, if you will cooperate, here is what happened, for instance, in the case of David Greenglass. Come forward and help your Government. We are in a system that recognizes and respects the dignity of the individual."

In this way, and with this help and with this encouragement and with this pat on the back, they can find out what the rest of the story is.

I say to your Honor that a sentence of 15 years is of such severity that it defeats and good purpose that it can serve. I say to your Honor that any sentence in excess of five years is of such severity.

I really felt that in view of all the circumstances in this case, and in order to be of proper help to investigative agencies, where they can point to the courageous coopera- [fol. 2491] tion of a person like David Greenglass, that a sentence of a year and a day would have been enough. I certainly say to your Honor, when you come to fixing the sentence at this time, do it on the side of leniency. I think that certainly you would serve justice and you would temper it with mercy if, let us say, you had a sentence in this case for David Greenglass of three years.

Mr. Saypol: I desire to make an observation, if the Court will allow me. I will not be extensive. It is merely a factual statement.

The Court: Please be very brief, Mr. Saypol.

Mr. Saypol: Indeed it will be. To the extent that Mr. Rogge undertakes to arrogate to himself the function of the District Attorney, in expressing his views as to what is most conducive for further prosecutive and investigative steps in respect to this sordid situation, I must say for the record that he is stepping outside of his role when he suggests what would be most valuable, from the view of sentence.

My memory is—I state this with knowledge of the facts—that those charged with the obligations for continuing investigation, in their discourse with me, are entirely in disagreement. They would be if they were to express it. [fol. 2492] Their views to me do not at all comport with what Mr. Rogge has said.

The Court: (To the defendant) Have you anything that you want to say?

The Defendant: Nothing.

The Court: Now, Mr. Rogge, you have stressed over and over again the fact that this Court should mete out what you characterize to be a light sentence. I like to think that neither do I ever mete out a light sentence, nor a heavy sentence, but rather a just sentence, a just sentence within the framework of the facts in this particular case.

The fact that I am about to show you some consideration does not mean that I condone your acts or that I minimize them in any respect. They were loathsome; they were contemptible. I must, however, recognize the help given by you in apprehending and bringing to justice the arch criminals in this nefarious scheme, Julius Rosenberg and his wife, Ethel Rosenberg.

You have at least not added to your sins by committing the additional crime of perjury. You confessed and told a complete story in this case and it has been of great assistance to the Government. I realize the courage that was required for you to give your testimony, and I must say that you were the recipient of the best kind of legal advice in doing so.

[fol. 2493] It is obvious that the Government gave due

consideration to your assistance in their recommendation. I have to be realistic in a situation such as this, and I recognize that despite my own inclination to be more severe on your sentence, due to the revolting nature of this offense, I must subordinate my own feeling. Our national security is more important than any personal feeling that I might have on the subject, and it is indeed more important, I think, than the punishment of any single individual; and by your assistance in this case you have helped us strike a death blow to the trafficking in our military secrets, to the advantage of a foreign nation.

Uncovering all other espionage rings which I am certain exist depends to a great extent upon the testimony of those members of the ring who recant, and seek to atone for their sins in some measure.

You like so many other foolish men and women believed that Soviet Russia was Utopia. You learned that when you enlisted in what you believed was a cause for the liberation of men you were in effect enlisting in the Russian Foreign Legion.

However, David Greenglass, you found your way back before the curtain fell on your life. You repented and you [fol. 2494] brought to justice those who enlisted you in this cause.

Justice does not seek vengeance. Justice seeks justice, but you deserve punishment, punishment which balances the gravity of your offense as against your aid.

I want you to know that I have given deep consideration to your case, with full recognition of the aid which you have given the Government, fully cognizant of the gravity of this offense.

It is the judgment of this Court that I shall follow the recommendation of the Government and sentence you to 15 years in prison.

[fol. 2495] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD AND EXHIBITS

The appellants herein and their counsel have represented and hereby represent to the appellee:

(1) That this transcript of the record contains all matter necessary fairly to present their points and such points as are relevant in reply.

(2) That in so far as the transcript of record purports to contain the stenographic minutes of proceedings, the minutes are set forth accurately, and omissions, if any, are clearly marked. Such omissions are only of matter wholly immaterial to any question raised on this appeal.

(3) That all exhibits are accurately reprinted, except those specified, namely Government Exhibits 1, 2, 3, 4A-B, 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 14A-B, 15, 16, 17, 18A, 19, 20, 21, 22A-B, 23A-B, 24A-B, 25, 25A, 26-A-1, 27, 28, 29, 31, 32; Defendants' Exhibits C 1, and H, which are omitted.

(4) That the transcript of the record contains all matters required to be set forth by applicable rules.

In reliance upon these representations it is hereby stipulated and agreed by the undersigned that the foregoing is a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties, and further, that all the exhibits pertaining to this cause not reproduced herein, may be submitted to the Court upon the argument of the appeal, with the same force and effect as if reproduced herein and, further, if it should appear to [fol. 2496] the appellee that matter properly a part of the transcript of record has been omitted and has become material, despite the representations herein made, the appellee may, at its option, reprint such matter as an appendix to its brief or may require the appellants to reprint such matter, and use such matter with the same force and effect as if reproduced herein.

[Not legible], Attorney for Appellants, Julius Rosenberg and Ethel Rosenberg; Harold M. Phillips and Edward Kentz, by Edward Kuntz, Attorneys for Appellant Sobell; Myles J. Lane, United States Attorney.

[fol. 2497] Clerk's Certificate to foregoing transcript omitted in printing.

Time to file record on appeal extended to 8/15/51.

[fol. 2498] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1951

Docket Nos. 22201-22202

UNITED STATES OF AMERICA, Appellee,

v.

JULIUS ROSENBERG and ETHEL ROSENBERG, and MORTON SOBELL, Appellants

Before Swan, Chief Judge, and Chase and Frank, Circuit Judges

Appeal from judgments of conviction entered by the United States District Court for the Southern District of New York. Affirmed.

Myles J. Lane (Roy M. Cohn, James B. Kilsheimer 3d and Stanley D. Robinson, of counsel) for United States of America.

Emanuel H. Bloch, for Julius Rosenberg and Ethel Rosenberg.

Harold M. Phillips and Edward Kuntz (Howard N. Meyer, of counsel) for Morton Sobell.

OPINION—(Argued January 10, 1952. Decided February 25, 1952)

On January 31, 1951, the grand jury indicted Julius and Ethel Rosenberg, David Greenglass, Anatoli Yakolev and [fol. 2499] Morton Sobell for conspiring between 1944 and 1950 to violate 50 U. S. C. 32[1] by combining to communicate

[1] So far as pertinent, it reads as follows:

(a) "Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, de-

to the Union of Soviet Socialist Republics documents, writings, sketches, notes and information relating to the national defense of the United States, with intent and reason to believe that it would be used to the advantage of the Soviet Union. Harry Gold and Ruth Greenglass were named in the indictment as conspirators but not as defendants, and a severance for trial purposes was granted as to David Greenglass, who pleaded guilty, and as to Anatoli Yakolev. The indictment listed ten overt acts done in furtherance of the conspiracy, including the receipt by Julius Rosenberg from Ruth Greenglass of a paper containing written information after a trip by Ruth to New Mexico, and the additional receipt by Julius from David Greenglass of a paper containing sketches of experiments conducted at the Los Alamos Project. Defendant Sobell made a motion for a bill of particulars. The government's answering affidavit charged Sobell with five overt acts made in furtherance of the conspiracy, all consisting of "conversations" with Julius Rosenberg on various dates. The trial of the defendants, Julius and Ethel Rosenberg and Morton Sobell, in the [fol. 2500] United States District Court for the Southern District of New York, lasted fourteen days.

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livers or transmits, or attempts to, or aids or induces another to, communicate, deliver or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, codebook, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided that whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years. * * *"

50 U. S. C. § 32 is now contained in the revised Title 18, § 794.

At the trial, witnesses for the government testified to the following: In November 1944, Ruth Greenglass planned a visit to her husband, David, stationed as a soldier in the Los Alamos atomic experimental station. Before her visit, Ethel and Julius Rosenberg, sister and brother-in-law of David Greenglass, urged Ruth to obtain from David specific information concerning the location, personnel, physical description, security measures, camouflage and experiments at Los Alamos. Ruth was to commit this information to memory and tell it to Julius upon her return to New York, for ultimate transmittal to the Soviet Union. David, reluctant at first, agreed to give Ruth the information Julius had requested. He told her the location and security measures of the station, and the names of leading scientists working there. When David returned to New York in 1945 on furlough, he wrote out a fuller report on the project for Julius, and sketched a lens mold used in the atomic experiment. A few nights later, at the Rosenberg home, the Greenglasses were introduced to Mrs. Sidorovich, whom Julius explained might be sent as an emissary to collect information from David in New Mexico. It was agreed that whoever was sent would bear a torn half of the top of a Jello box which would match the half retained in Ruth's possession. Ethel Rosenberg, at this time, admitted her active part in the espionage work Julius was carrying on, and her regular typing of information for him. Julius introduced David to a Russian, who questioned David about the atomic-bomb operation and formula. In June 1945, Harry Gold arrived in Albuquerque with the torn half of the Jello box and the salutation, "I come from Julius." He had been assigned to the mission by Yakolev, his Soviet superior, and had, the day before his trip, met, pursuant to [fol. 2501] Yakolev's command, with Emil Fuchs, British scientist and Russian spy working at Los Alamos. David delivered to Gold information about personnel in the project who might be recruited for espionage, and another sketch of the lens mold, showing the basic principles of implosion used in the bomb construction. Gold relayed the information to Yakolev. On a revisit of the Greenglasses to New York, David turned over a sketch of the cross-section and a ten-page exposition of the bomb to Rosenberg. Ethel typed up

the report, and, during this meeting, Julius admitted he had stolen a proximity fuse from a factory, and had given it to Russia. After the war, David went into business—a small machine-shop—with Julius, and Julius several times offered to send David to college on Russian money. Julius confided to David that he was helping the Russians subsidize American students, that he had contacts in New York and Ohio, and supplied information for siphoning to Russia, that he transmitted information to Russia on microfilm equipment, and that he received rewards for his services from the Russians in money and gifts. In 1950, Julius came to David and told him to leave the country immediately, since Dr. Fuchs, one of Gold's collaborators, had been arrested; he, Julius, would supply the money and the plan to get to Russia. A month later, after Gold's arrest, Julius repeated the warning to flee, adding that he and his family intended to do likewise, and giving David $1,000. Julius said his own flight was necessitated by the fact that Jacob Golos, already exposed as a Soviet agent, and Elizabeth Bentley, probably knew him. Julius said he had made several phone calls to her and that she had acted as a go-between for him and Golos. Julius gave David an additional $4,000 for the trip. Julius had passport photos taken, telling the photographer that he and his family planned to leave for France. After David's arrest for espionage, Ethel asked Ruth to make David keep quiet about Julius and take the blame alone, [fol. 2502] since Julius had been released after admitting nothing to the F. B. I. In 1944, Julius several times solicited Max Elitcher, a Navy Department engineer, to obtain antiaircraft and fire-control secrets for Russia, and in 1948 asked him not to leave his Navy Department job because he could be of use there in espionage. A month or so later Elitcher accompanied Sobell to deliver "valuable information" in a 35-millimeter can to Julius.

According to the government's witnesses, Sobell, a college classmate of Rosenberg's, suggested to Rosenberg that Elitcher would be a good source of espionage information, and he, Sobell, later joined Julius, in urging Elitcher not to leave the Navy Department. According to Julius, Sobell regularly delivered information for transmittal to Russia. Sobell (as noted above) delivered "valuable information" to Julius on an emergency midnight ride after learn-

ing that Elitcher was being followed by the F. B. I. He asked Elitcher for a fire-ordinance pamphlet and for the names of young engineers who might supply military information to the Russians. In 1950, Sobell fled to Mexico, used various aliases there, and made inquiries about leaving Mexico for other countries. He was, however, deported from Mexico to the United States.

The Rosenbergs took the stand and testified as follows: They had never solicited the Greenglasses for atomic information or participated in any kind of espionage work for Russia. Julius denied stealing a proximity fuse. He did not, he said, ever know Harry Gold or call Elizabeth Bentley. He admitted that he and David went into business together after the war, but said they did not enjoy good business relations. In 1950, David, according to Julius, excited, asked Julius to get a smallpox vaccination certificate from his doctor and to find out what kind of injections were necessary for entrance into Mexico. Ruth had told Julius that David stole things while in the Army, and [fol. 2503] Julius thought David was in trouble on this account. David asked for a few thousand in cash and, when Julius refused, told Julius he would be sorry. Julius denied that he gave David any money to flee, or had any passport pictures of his own family taken preparatory to flight. He never discussed anything pertaining to espionage with either Sobell or Elitcher although he saw both socially. In short, the Rosenbergs denied any and every part of the evidence which the government introduced in so far as it connected them with Soviet espionage. Sobell did not take the stand, but he pleaded not guilty. At the end of the trial, the jury found the three defendants guilty as charged. The trial judge sentenced the Rosenbergs to death, and Sobell to thirty years' imprisonment.

FRANK, Circuit Judge:

Since two of the defendants must be put to death if the judgments stand, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal.

1. The Supreme Court has held that the Espionage Act of 1917 makes criminal, and subject to the prescribed penal-

ties, the communication of the prohibited information to the advantage of "any foreign nation," even if such communication does not injure this country. See *Gorin* v. *United States*, 312 U. S. 19, 29-30, where the Court said: "Nor do we think it necessary to prove that the information obtained was to be used to the injury of the United States. The statute is explicit in phrasing the crime of espionage as an act of obtaining information relating to the national defense 'to be used * * * to the advantage of any foreign [fols. 2504-2505] nation.' No distinction is made between friend or enemy. Unhappily the status of a foreign government may change. The evil which the statute punishes is the obtaining or furnishing of this guarded information, either to our hurt or another's gain." [1a] Accordingly, the trial judge, in the case at bar, properly instructed the jury as follows: "I charge you that whether the Union of Soviet Socialist Republics was an ally or friendly nation during the period of the alleged conspiracy is immaterial, and you are not to consider that at all in your deliberations."

In *United States* v. *Heine*, 151 F. (2d) 813 (C. A. 2), we so interpreted the statute as to make it inapplicable to information which our armed forces had consented to have made public. The defendants now assert that the indictment, which followed the language of the statute, was

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[1a] In *United States* v. *Heine*, 151 F. (2d) 813, 815 (C. A. 2), after stating that the words "to the advantage of a foreign nation," inserted while the statute was in process, "greatly enlarged its scope," we went on to say: "* * * for while it is true that it is somewhat hard to imagine instances in which anyone would be likely to transmit information 'relating to the national defense,' which would be injurious to the United States, and yet not advantageous to a foreign power, it is possible to think of many cases where information might be advantageous to another power, and yet not injurious to the United States. The section as enacted necessarily implies that there are some kinds of information 'relating to the national defense' which must not be given to a friendly power, not even to an ally, no matter how innocent, or even commendable, the purpose of the sender may be."

fatally defective since it did not allege that the matter there described was not public. But the statutory language necessarily imported its correct judicial interpretation. Consequently the indictment was sufficient under Rule 7(c) of the Federal Rules of Criminal Procedure which provides: "The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * * The indictment or information shall state for each count the official or customary [folio 2506] citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated."[2]

In the *Gorin* case, the Supreme Court rejected the contention of the unconstitutionality of the statute on the ground of its vagueness under the due process clause of the Fifth Amendment. By implication, it sustained the validity of the statute against any identical argument of vagueness, such as the one urged here, under the Sixth Amendment, since the Court's decision was primarily concerned with whether the statute set up definite enough standards of guilt to advise a citizen of what exactly was forbidden and *ipso facto* a potential defendant of what exactly he was charged with doing. The Court said: "But we find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law. The obvious delimiting words in the statute are those requiring 'intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation.' This requires those prosecuted to have acted in bad faith. The sanctions apply only where scienter is established. * * * Finally we are

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[2] Rule 7(f) says: "The court for cause may direct the filing of a bill of particulars." The Rosenbergs, like Sobell, might have requested such a bill if they were really confused as to whether or not they were charged with transmitting secret information. One of the overt acts charged in the indictment covered the reception by Julius of sketches of the experiment conducted at the Los Alamos project, a good indication that the material involved was secret.

of the view that the use of the words 'national defense' has given them, as here employed, a well understood connotation. * * * National defense, the Government maintains, 'is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness.' We agree that the words [fol. 2507] 'national defense' in the Espionage Act carry that meaning. * * * The language employed appears sufficiently definite to apprise the public of prohibited activities and is consonant with due process."[3]

We think the statute valid under the First Amendment as well. The communication to a foreign government of secret material connected with the national defense can by no far-fetched reasoning be included within the area of First-Amendment protected free speech. As interpreted in the *Gorin* case, the statute forbids nothing except such communication. The Court's decision that the statute was definite enough to tell citizens what was prohibited satisfies appellants' contention that many legitimate exercises of First-Amendment rights will fall within the language of the statute. The Court said, "This requires those prosecuted to have acted in bad faith. The sanctions apply only where scienter is established." Stripped down, defendants' First-Amendment argument is the same as their argument under the Fifth and Sixth—*i.e.*, vagueness—and we think the Supreme Court has answered that argument. "A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties, and to guide the judge in its application and the lawyer in de-

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[3] The defendants argue that the *Gorin* case is not binding here, even on the due-process argument, because that case "was decided under a concession of validity of the intent clauses which enabled the court to hold that they cured the unconstitutional vagueness of the criminal standard." We find nothing in the decision indicating any "concession of validity of the intent clauses." The attack was as broad as the concept of Fifth-Amendment due process. Nor do we think the Supreme Court, in sustaining the constitutionality of so important a statute, would rely on clauses valid only by concession, without examining those clauses themselves for constitutional vulnerability.

fending one charged with its violation. But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in [fol. 2508] factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." *Boyce Motor Lines* v. *United States*, —— U. S. —— (January 29, 1952).[4]

2. The defendants, in their briefs and oral arguments in this court, have attacked the reliability of the damaging testimony given against them by the government's chief witnesses who are all self-confessed spies, and particularly the credibility of the testimony of the Greenglasses, one of whom the government has not prosecuted and the other of whom received a relatively mild sentence. Doubtless, if that testimony were disregarded, the conviction could not stand. But where trial is by jury, this court is not allowed to consider the credibility of witnesses or the reliability of testimony. Particularly in the federal judicial system, that is the jury's province.

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[4] The Supreme Court had in mind free speech considerations in the *Gorin* case, although there the statute had not been attacked on any such specific ground. For the Court said: "The philosophy behind the insistence that the prohibitions * * * upon which the indictment is based, are limited to places and things which are specifically set out in 1(a), relies upon the traditional freedom of discussion of matters connected with national defense which is permitted in this country. It would require, urge petitioners, the clearest sort of declaration by the Congress to bring under the statute the obtaining and delivering to a foreign government for its advantage of reports generally published and available. * * *" Our court said in *United States* v. *Heine*, *supra*, "Obviously — so drastic a repression of the free exchange of information it is wise carefully to scrutinize, lest extreme and absurd consequences result."

The jury here were warned by the trial judge as follows: "As to the testimony of David Greenglass, Ruth Greenglass [fol. 2509] and Harry Gold, you must consider it carefully and act upon it with caution, for they are accused of being accomplices. An accomplice in this case is anybody that the prosecution charges agreed or confederated with any or all of the defendants in the commission of the crime charged, as alleged in the indictment. I am not saying that, because a person is a co-conspirator or an accomplice, he or she is not to be believed. If this were so, many cases in this court could not be proven. In the Federal Court a defendant can be convicted upon the uncorroborated testimony of an accomplice whose testimony satisfies the jury of the defendant's guilt beyond a reasonable doubt." So instructed, the jury found defendants guilty. Faced with such a verdict, this court is obligated to assume that the jury believed the evidence unfavorable to the defendants. On that assumption, the evidence to sustain the verdict is more than ample.

3. Defendants, however, tell us that the trial judge behaved himself so improperly as to deprive them of a fair trial. Defendants' counsel first broached this suggestion on a motion for mistrial after all the evidence had been heard, said that the judge's alleged fault had been "inadvertent," and added that the judge had "been extremely courteous to us and afforded us lawyers every privilege that a lawyer should expect in a criminal case." Soon after the denial of this motion, counsel for the Rosenbergs, summing up for the jury, stated that "we feel that the trial has been conducted * * * with that dignity and that decorum that befits an American trial." Still later, the same counsel said that "the court conducted itself as an American judge." These remarks, by a highly competent and experienced lawyer, are not compatible with the complaints now made. Nor are those complaints deserved. We think the judge stayed well inside the discretion allowed him.

[fol. 2510] He is charged mainly with taking too active a part in the trial process by his questioning of witnesses. By this questioning he is alleged to have (1) emphasized key points of the government's case; (2) protected and re-

habilitated government witnesses; (3) commented on evidence as immaterial or dismissed contradictions brought out by defense attorney as not very important or convincing; (4) examined the defendants with hostility. We have carefully examined each of the hundred or so incidents cited by defendants. Several representative incidents are set out in the footnote.[5]

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[5] (1) *Alleged emphasizing of key points of the Government's case*:

Dorothy Abel, Ruth's sister, was under cross-examination as to specific declarations allegedly made by Julius in her presence with respect to the United States and the Soviet Union. The witness had replied that Julius criticized our Government because it was "capitalistic * * * that is about all I can remember." The following occurred:

> "Mr. E. H. Bloch: What else?
> "The Court: Is that the reason they assigned for preferring the Russian form of government?
> "The Witness: Yes.
> "The Court: Was there discussion of the relative merits of the capitalistic form of government as against communistic form?"

(2) *Alleged protecting and rehabilitating of Government witnesses:*

Elitcher had failed to record on his direct examination his presence at Julius' home in the week of Christmas, 1946, although he had been asked, in chronological approach, his meetings with Julius. The cross-examiner:

> "Question: You forgot about that?
> "The Court: He wasn't asked about it if I remember and it might have been nothing to the Government's case. There is a certain inference in your question that he deliberately withheld it."

Ruth was being examined on the Jello-box side she allegedly obtained from Julius and kept for many months to match with the other side produced by Gold. When pressed to describe the printing or words on this Jello box side,

[fol. 2511] In general, we can find no purpose in the judge's questioning except that of clarification. If, with that purpose, he gave witnesses who had contradicted themselves a chance to resolve that conflict, and took away defendants' temporary advantage with the jury, it was an unavoidable incident of his unchallenged power to bring out the facts of the case. See, *e. g.*, *Simon* v. *United States*, 123 F. (2d) 80, [fol. 2512] 83 (C. A. 4) cert. den. 314 U. S. 694: "It cannot be too often repeated or too strongly emphasized that the function of a federal trial judge is not that of an umpire or of a moderator at a town meeting. He sits to see that justice is done in the cases heard before him; and it is his duty to see that a case on trial is presented in such a way as to be

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she answered that her lack of knowledge of details "was not pertinent." The interlocutor's motion to strike the answer was granted and the witness admitted she had not looked at the object in her possession.

> "The Court: Now let me ask you this: what was important to you?"

The witness replied that her interest was confined to the use of the Jello box as an identification medium to be matched with the expected courier's other side of the box.

> "The Court: Excuse me, when the bearer of the other half of that side of the Jello box was to come to you, was it your primary purpose in seeing whether the two sides would fit together like a jigsaw puzzle?
> "The Witness: Yes.
> "The Court: Very well."

(3) *Alleged improper comments on evidence*:

Ruth, on cross-examination, was directed to go over her conversation with the Rosenbergs in November 1944. The cross-examiner, for the purpose of showing the witness was rehearsed, asked whether the witness' recounting of the incident was not a verbatim repetition of her direct testimony. The prosecutor objected; the following was the ruling:

> "The Court: Your objection is sustained. I don't know exactly what the point is. If the witness has

understood by the jury, as well as by himself. He should not hesitate to ask questions for the purpose of developing the facts; and it is no ground of complaint that the facts so developed may hurt or help one side or the other. In no case is the exercise of this power of the judge more important than in one like this, involving, as it does, lengthy circumstantial testimony, the force of which may be lost upon the jury if it is not properly presented or if its salient features are not called to the jury's attention at the time. The judge is the only disinterested lawyer connected with the proceeding. He has no interest except to see that justice is done, and he has no more important duty than to see that the facts are properly developed and that their bearing upon the question at issue are clearly understood by the jury." If some of his questions and comments indicated [fol. 2513] his opinion of the merits of counsel's attack or

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left out something, Mr. Bloch would say the witness didn't repeat the story accurately, and the witness repeats it accurately and apparently that isn't good."

(4) *Alleged hostile examination of defendants*:

By the Court:

"What were your own views about the subject matter of the United States having any weapon that Russia didn't have at that time? That is, in 1944 and 1945. A. I don't recall having any views at all about it.

"Q. Your mind was a blank on the subject. * * * There were never any discussions about it at all? A. Not about that, not about the weapon.

"Q. Was there any discussion at all as to any advantages which the United States had to make warfare that the Russians didn't have? A. No, nothing of that sort.

"Q. You never heard any discussions that there should be equalization between Russia and the United States? A. No, sir."

Julius had expressed to Ethel his belief that David was attempting to "blackmail" him when David's request to him for money in May or early June, 1950 was rejected and

of the witnesses' testimony, it cannot be said that he committed reversible error, since unlike judges in many of our state courts, a federal judge may comment outright on any portion of the evidence, telling the jury how it struck him, whom he believed, or disbelieved, and the like, provided only that he advises the jury that they are in no way bound by his expressions of such views. *United States* v. *Aaron*, 190 F. (2d) 144, 146-147 (C. A. 2); *United States* v. *Chiarella*, 184 F. (2d) 903, 908 (C. A. 2) rev'd on government's confession of error 341 U. S. 946; *Pfaff* v. *United States*, 85 F. (2d) 309, 311 (C. A. 7); *United States* v. *Warren*, 120 F. (2d) 211, 212 (C. A. 2); *Ochoa* v. *United States*, 167 F. (2d) 341, 344 (C. A. 9); *Herron* v. *Southern Pacific Co.*, 283 U. S. 91, 95; *Glasser* v. *United States*, 315 U. S. 60, 82.

Here the trial judge said in his charge: "No matter how careful a judge may be to avoid it, there is always the possibility that the jury or some particular juror may get an impression that the judge has some opinion with reference to the guilt or innocence of the defendants, or that he thinks that some particular phase of the case is more

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David had warned Julie "I just got to have that money and if you don't get me the money you are going to be sorry."

The Court:

"Q. Blackmail you. When did he try to blackmail you? A. Well, he threatened me to get money. I considered it blackmailing me.

"Q. What did he say he would do if you didn't give it to him? You said he said you would be sorry. A. Yes. I consider it blackmail when somebody says that.

"Q. Did he say what he would do to you? A. No, he didn't.

"Q. Did he say he would go to the authorities and tell them you were in a conspiracy with him to steal the atomic bomb secret? A. No.

"Q. Do you think that was what he had in mind? A. How could I know what he had in mind.

"Q. What do you mean by blackmail then? A. Maybe he threatened to punch me in the nose or something like that."

important than another, or that some particular witness is more credible than another, or that a certain inference of fact should not be made and so on. If you have formed any such impression you must put it out of your mind and utterly disregard it. Nothing I have said during the trial nor in these instructions was intended to give any such impression; nor were any remarks or questions addressed to any of the witnesses or to counsel so intended. On the contrary, I have been scrupulously careful to avoid any comment which might even remotely suggest that I considered the subjects of the weight of testimony, the credibility of witnesses, the inferences to be drawn or the relative importance of one segment of the evidence as against another, of the determination of the guilt or innocence of the defend-[fol. 2514] ants, as coming within the orbit of any of my functions as the presiding Judge in this trial. And so I tell you again, you are the sole and exclusive judges of the facts of this case; you, and you alone, will pass upon the credibility of all the witnesses, all in accordance with the instructions on that subject, which I shall give you later. Despite anything said by me or by counsel, your recollection of the testimony must prevail whenever your recollection differs from what I have said or what counsel for either side have said in argument or otherwise; it is for you to determine what the proofs adduced by both sides disclose, regardless of anything said by me in the brief and necessarily incomplete summaries which I have given you of the contentions of the parties; and it is for you and you alone to weigh the proofs, draw such inferences of fact therefrom as you determine should be drawn and to decide each and every one of the issues of fact in the case."

4. Evidence was introduced to the effect (1) that the defendants expressed a preference for the Russian social and economic organization over ours, and (2) that the defendants were members of the Communist Party. The defendants say this evidence was incompetent to show they would commit espionage for Russia, and that it improperly inflamed the jury against them. We think the evidence possessed relevance. An American's devotion to another country's welfare cannot of course constitute proof that he has spied for that other country. But the jurors may

reasonably infer that he is more likely to spy for it than other Americans not similarly devoted. Hence this attitude bears on a possible motive for his spying, or on a possible intent to do so when there is other evidence in the case that he did such spying. We have held such testimony admissible in a similar case involving espionage for Nazi Germany. *United States* v. *Molzahn*, 135 F. (2d) 92, 97 [fol. 2515] (C. A. 2, cert. den. 319 U. S. 774). See also *Haupt* v. *United States*, 330 U. S. 631, 642.

Communist Party membership presents a somewhat more complicated problem than pro-Soviet statements. The government had to prove that the Communist Party was tied to Soviet causes in order to make membership in it meaningful as evidence of motive or intent to aid Russia. Early in the trial, the trial judge so cautioned the jury: "I want you to understand right at the outset that the fact that they were members of the Communist Party does not establish the elements necessary to prove them guilty of the crime charged in this indictment which is conspiracy to commit espionage. * * * The government will have to establish that there is some connection between communism and committing the offense charged in the indictment." To that end, the government put Elizabeth Bentley on the stand. She testified that the American Communist Party was part of, and subject to, the Communist International; that the Party received orders from Russia to propagandize, spy, and sabotage; and that Party members were bound to go along with those orders under threat of expulsion. If the jury believed her, she supplied the missing link connecting the Communist Party with the Soviet Union, and making Communist Party membership probative of motive or intent to aid Russia.[5a]

Of course, such evidence can be highly inflammatory in a jury trial. This court and others have recognized that

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[5a] Sobell argues that proof of his Communist Party membership in 1941 was too remote to bear on his intent to join the conspiracy in 1944. We think not. In *United States* v. *Molzahn*, *supra*, we held admissible statements evidencing defendant's sympathy with the Nazi regime seven years before the alleged conspiracy began.

the Communist label yields marked ill-will for its American wearer. See, *e. g.*, *Grant* v. *Readers Digest Association*, 151 F. (2d) 733 (C. A. 2); *Menker* v. *Chesley*, 297 N. Y. 94, [fol. 2516] 100. Whether and how much of that kind of evidence should come into a trial like this is a matter for carefully-exercised judicial discretion. We think the trial judge here did not abuse that discretion. Each time Party membership was alluded to, and again in his final charge, the judge cautioned the jurors "not to determine the guilt or innocence of a defendant on whether or not he is a Communist." It may be that such warnings are no more than an empty ritual without any practical effect on the jurors; see Mr. Justice Jackson in *Krulewitch* v. *United States*, 336 U. S. 440, 453.[6] If so, this danger is one of the risks run in a trial by jury; and the defendants made no effort to procure a trial by a judge alone, under Criminal Rule 23(a).

5. Early in the trial Elitcher testified that he had accompanied Sobell on a hurried ride to the Rosenbergs to deliver "valuable" information to Julius. This ride was precipitated by Elitcher's suspicion, recounted to Sobell, that he, Elitcher, was being followed. Elitcher testified about Sobell as follows: "I turned to him and said, 'Well, what does Julie think about this, my being followed?' He said 'It is all right; don't be concerned about it; it is O.K.' He then said Rosenberg had told him that he once talked to Elizabeth Bentley on the phone but he was pretty sure she didn't know who he was and therefore everything was all right."

Defendants at the trial neither objected to this testimony nor moved to strike it. They now contend that it was inadmissible hearsay. The government contends that it was not hearsay since it was a report of a statement by Sobell, one of the Rosenberg's fellow-conspirators, about something Rosenberg said in furtherance of the conspiracy. If

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[6] See also *Skidmore* v. *Baltimore & Ohio R. Co.*, 167 F. (2d) 54, 61 (C. A. 2).

[fol. 2517] we assume that this contention is not sound,[7] nevertheless the jury was properly allowed to consider this testimony. For, as the Supreme Court has held as to hearsay testimony: "If evidence of this kind is admitted without objection, it is to be considered, and accorded its natural probative effect, as if it were in law admissible." *Speller* v. *Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117, 130; *Diaz* v. *United States*, 223 U. S. 442, 450; *Schlemmer* v. *Buffalo, Rochester Ry.*, 205 U. S. 8, 9; *Dowling* v. *Jones*, 67 F. (2d) 537, 539 (C. A. 2). The federal authorities are unanimous on this point.[8]

Greenglass also testified that Julius Rosenberg had said Miss Bentley probably knew him. The jury was therefore entitled to believe, on the basis of Elitcher's and Greenglass' testimony that Julius had spoken on the phone to Miss Bentley. In those circumstances, we see no error in permitting Miss Bentley to testify, over defendants' objections, as follows: She received several phone calls in 1943 from a man who called himself "Julius"—whose voice she

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[7] The Rosenbergs argue that the statement was not made in furtherance of the conspiracy, since Elitcher was not a member of the conspiracy as an active source of information to it. The Government answers, with reason, that Rosenberg considered Elitcher still a good prospect for espionage, and the statement was made to calm him down so that he might be willing in the future to contribute.

[8] True, we may, of our own motion, notice egregious errors to which there were no objections below, if they "seriously affect the fairness, integrity or public reputation of judicial proceedings." *Johnson* v. *United States*, 318 U. S. 189, 200-201; Criminal Rule 52(b). That exception might conceivably govern here if we believed the failure to object to this testimony resulted from the incompetence of defendants' counsel. But the record shows that defendants' counsel were singularly astute and conscientious. We know, too, that an able trial lawyer, for one or more of a variety of reasons, will often withhold an objection to the reception of hearsay. When he has done so, and it turns out that the jury's verdict is adverse to his client, the lawyer may not assert that reception as error.

did not recognize. She would then call Golos, a top Russian [fol. 2518] spy, and give him Julius' messages—acting as a go-between for "Julius" and Golos. From her talks with "Julius" and Golos, she learned that "Julius" lived in Knickerbocker Village—where, in fact, Rosenberg lived.

The testimony of Elitcher and Greenglass supplied sufficient circumstantial evidence to make it proper to allow the jury to infer that it was Julius Rosenberg, the defendant who, by phone, gave Miss Bentley the information she passed on to Golos. *Jarvis* v. *United States*, 90 F. (2d) 243 (C. A. 1) cert. den. 302 U. S. 705; 7 Wigmore, Evidence, sec. 2155. Moreover, according to Greenglass' testimony, Julius Rosenberg told the Greenglasses that an emissary would contact them in New Mexico bearing greetings from himself, Julius; Harry Gold testified that, by command of Yakolev, another spy, he, Harry Gold, bore the greeting, "I come from Julius," when he met up with the Greenglasses, per arrangement, in Albuquerque. The trial judge, of course, told the jury that they were free to accept or reject the inference that it was Rosenberg who called Miss Bentley.

6. The trial judge instructed the jury: "Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, the enforcement of the espionage laws takes on a new significance. Our national well-being requires that we guard against spying on the secrets of our defense." Concerning this statement defendants argue: "The mandate to the jury to correlate the tensions of the times with the 'new significance' to enforce the espionage laws was not only an irrelevance, but licensed the triers of the facts to yield to their emotional bias and insinuated that it would be a reflection on their responsibility as patriotic citizens if they returned a verdict other than 'guilty.'" We do not agree. For the judge also said that he did "not mean that the mere allegation or use of the word 'espionage' [fol. 2519] should justify convicting innocent persons"; and he cautioned the jurors that it was their duty "to approach [the] task of determining the issues with * * * minds completely barren of prejudice or sympathy," to "weigh the evidence in this case calmly and dispassionately

* * *" It can hardly be seriously contended that commenting on the "new significance" of espionage law enforcement gave the jury a green light to convict on emotions rather than evidence.

7. In summing up, Rosenberg's counsel argued to the jury that the Greenglasses' testimony should not be credited because they testified as part of an understanding with the prosecutor that Ruth Greenglass would not be prosecuted and that David Greenglass would receive a relatively light sentence. When, soon after the jury heard this argument, the judge instructed the jury, he said they should consider whether the Greenglasses testified as a result of business difficulties,[9] "or for some other unknown reason." It is urged that, as this statement inaccurately characterized defendants' argument, it constitutes error. We think not. The judge had no duty to repeat all the lawyers' arguments which the jury had heard a short time before. He explicitly told the jury that he could not cover all of the arguments made by both sides in their summations, and that his reference to some portions of evidence and not others "should not be taken as * * * any indication as to [his] opinion of the comparative importance or weight of that particular evidence." In addition, he explained (as we have already noted) that the Greenglasses were accomplices, and that their testimony must be carefully examined for that reason.

8. David Greenglass testified that Julius admitted "stealing" a proximity fuse from the Emerson Radio Company where he worked, and giving the fuse to Russia. On objection by defendants to the word "stealing," the court [fol. 2520] ordered it stricken. Defendants complain of the denial of their motions to strike all this testimony. They urge it was irrelevant since it was not shown that the proximity fuse was either secret or connected with national defense. The proximity fuse, be it noted, was an important World War II development which vastly increased the potential damage range of exploding shells. The nature of the device itself strongly suggests that it was secret, and unequivocally shows that it was connected with the national defense. At any rate, the testimony was admissible to show an intent on Julius' part to aid Russia.

[9] There was testimony as to such difficulties.

9. The Rosenbergs contend that four Government exhibits (2, 6, 7 and 8), consisting of sketches made by David Greenglass of lens molds and an atom bomb were improperly admitted in evidence. Exhibits 2 and 8 are diagrams of a clover-leaf type high explosive lens mold used in atomic bomb experiments and a cross-section of an atom bomb, respectively. David Greenglass testified that these diagrams, which he reproduced for use at the trial, were accurate replicas of sketches given by him to Julius Rosenberg in 1945, and last seen by him at that time. Greenglass further testified that Exhibits 6 and 7 were accurate representations of lens mold sketches which he turned over to Harry Gold, in conjunction with a report on atomic experimentation, in June, 1945. The original sketches were allegedly delivered to Yakolev by Gold and transmitted to the Soviet Union. Greenglass explained all four exhibits to the jury and used them to illustrate his testimonial description of the information he imparted to Rosenberg and Gold. Such sketches would ordinarily be admissible under the "map, diagram, and chart" rule which permits a witness to clarify his testimony by written illustration, so as to communicate complicated or confusing information more easily to the jury. *Golden Eagle Farm Products* v. *Approved Dehydrating Co.*, 147 F. (2d) 359 (C. A. 2). Defen- [fol. 2521] dants also object because David's superiors at Los Alamos were allowed to examine these sketches and to testify that they were reasonably accurate portrayals of the lens mold and atomic mechanisms used in the experimental station. We see no error here. A witness may always comment upon the substance or import of another witness' testimony; there is no reason to differentiate between verbal and non-verbal testimony in this respect. At no time were the sketches held out as those actually transmitted by Greenglass to Russia or exact replicas or copies thereof. They represented only Greenglass' recollection of what he had given the foreign agents. Hence there was no infraction of the secondary evidence rule.

10. The jury, during its deliberations, asked for a reading of that part of Ruth Greenglass' testimony covering the period from the time Rosenberg first approached her for espionage to the return of her husband to New York in 1945. Out of the jury's presence, defense counsel then asked the

judge to have read to the jury the cross-examination covering the same period. The judge said he would not, without an express request from the jury. After the direct had been read to the jury, the judge asked them if they had what they wanted, and they said yes. Defense counsel, then, in the jurors' presence, again requested that the cross-examination be read. The judge at once replied that he would read only what the jury asked for. The jurors remained silent. Defense counsel objected. They now argue that the failure to comply with their request was prejudicial error. We think not. We think that the jury understood from the colloquy that the cross would be read if the jurors so desired, and that their silence meant they had no such desire. Indeed, defendants' own argument bears this out: They do not assert that the failure to read the cross was harmful because the cross contradicted or markedly differed from the direct, but, on the contrary, because it re-[fol. 2522] peated the direct almost word for word, so that (say defendants) the jury, had it heard the cross, might have concluded that the testimony was a rehearsed falsehood. However, but a short time previously, Rosenberg's counsel, in summation to the jury, had made precisely that point (*i.e.*, that the cross parroted the direct). If the jurors had been impressed by this argument and, on that account, wanted Ruth's cross to check this very point, they would almost certainly have asked especially that the cross be read, particularly after defense counsel, in their presence, made this request. Accordingly, we hold that the refusal to have the cross read was within the trial judge's discretion.

11. As part of its case in chief, the government introduced testimony that, in 1950, after the arrest of the British atomic physicist, Dr. Klaus Fuchs, for espionage on behalf of Russia, Julius Rosenberg warned Greenglass to leave this country by way of Mexico; that Rosenberg repeated this warning after Gold's arrest; that Julius said he and his wife also intended to flee to Mexico. When the government rested, the Rosenbergs took the stand; on direct, among other things, they contradicted the foregoing testimony. On March 26, 1951, during Julius Rosenberg's cross-examination, he denied having had passport pictures taken in May or June 1950; on March 27, 1951, after the defend-

ants had rested their case, the government called one Schneider, a professional photographer, as a rebuttal witness. Defense counsel at once objected to any testimony by Schneider, on the ground that his name was not on the list of witnesses submitted before the trial to the defendants in accordance with 18 U. S. C. sec. 3432.[10] Thereupon, in [fol. 2523] answer to questions put by the prosecutor, Schneider testified that, on March 26, 1951, two F. B. I. agents came to see him, and that then for the first time had anyone communicated with him about the subject for which he was called as a witness. Over objection by the defense on the ground that Schneider's testimony was "not proper rebuttal," he was then allowed to testify that, in May or June 1950, at his photography shop, he had taken the photographs of the Rosenbergs and their children, and that at that time Julius Rosenberg had said the pictures were needed to enable the Rosenberg family to go abroad.[11]

The statutory requirement concerning the list of witnesses to be supplied before trial has been held inapplicable to a rebuttal witness.[12] Defendants argue that Schneider's testimony was inadmissible, since it served merely to corroborate evidence introduced by the government on its case in chief and was thus not rebuttal of new matter arising on defendants' case. A majority of this court rejects this argument.[12a] But, even if this argument is sound, the

[10] It reads:

> "A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with * * * a list * * * of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each * * * witness."

[11] No evidence was heard after March 27, 1950. Schneider was the last witness.

[12] *Goldsby* v. *United States*, 160 U. S. 70, 76; *Gordon* v. *United States*, 289 Fed. 552, 554 (App. D. C.).

[12a] The writer of this opinion has some doubt as to whether it was rebuttal within the meaning of the cases relative to 18 U. S. C. s. 3432. But see *State* v. *McCumber*, 202 Iowa 1382, 212 N. W. 137.

reception of this testimony was not erroneous. As it was a reasonable inference from Schneider's testimony that the government did not know of Schneider until the day before he was called as a witness, it could not have included his name in the witness list handed defendants before the trial, which began some three weeks earlier. Consequently, the statute, properly interpreted, did not exclude Schneider's testimony altogether. See *United States* v. *Schneider*, 21 D. C. Rep. 381, 413: "The statute was never intended to [fol. 2524] preclude the United States from making use of any material testimony discovered during the progress of the trial and all that it exacts of the prosecuting officer is that he shall in good faith furnish to the prisoner, before the trial, the names of all witnesses then known to him and intended to be used at the trial." It might well have been error to refuse a reasonable request for adjournment coupled with some showing of surprise. But defendants made no such request.[13]

12. Sobell raises several questions affecting his conviction. The most important of these is whether or not he was proved to be a member of the Rosenberg Greenglass Gold conspiracy to ship information to Russia. Even accepting all of Elitcher's testimony as true, says Sobell, it showed only that he, Sobell, conspired with Julius Rosenberg to solicit Elitcher's aid in espionage activities along with that of other young engineers, and to send abroad certain kinds of military engineering and fire control information,[14] but no evidence connected him in any way with the Greenglass-Gold-Rosenberg plan to ship atomic information from Los Alamos to the Soviet Union. At the end of the government's case, Sobell's counsel moved to dismiss the indictment on the ground that not one but two separate conspira-

[13] Cf. *United States* v. *McNabb*, 123 F. (2d) 848, 853 (C. A. 6, rev'd on other grounds, 318 U. S. 332); A. L. I. Code of Criminal Procedure, s. 194; *State* v. *Nolan*, 31 Id. 71, 169 Pac. 295; *State* v. *Urban*, 117 Kans. 149, 230 Pac. 77; *Crandbouche* v. *People*, 104 Col. 175, 89 P. (2d) 577; *State* v. *Harding*, 108 Wash. 606, 185 Pac. 579.

[14] There was also evidence that Sobell delivered "valuable" information to Rosenberg in a 35 millimeter film can in 1950.

cies had been proved by the government,[15] one involving [fol. 2525] Rosenberg, Greenglass and Gold, whose purpose was the transmission of atomic information, and the other involving Rosenberg and Sobell, aimed solely at the sending of various types of military information abroad. The motion was denied; the trial judge committing himself to the theory that the government's witnesses, if believed, proved one giant conspiracy, to send defense information abroad, of which the atomic espionage was only one "branch." Despite objection by Sobell's counsel, the judge charged the jury, on the one-conspiracy theory, as follows: "Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point that out because the Government contends that Sobell was in the general conspiracy to obtain information of a secret nature. To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country. If you do not believe the testimony of Max Elitcher as it pertains to Sobell, then you must acquit the defendant Sobell. If you find that there was a conspiracy and that Morton Sobell was a member of the conspiracy, any statements or acts of any co-conspirators are binding upon him because the law is that once you have joined a conspiracy attempting to accomplish an unlawful objective, the acts of the co-conspirators done in furtherance of the same objective, even though the co-conspirators are unknown to you, are binding upon you."

If in fact, Sobell is right that two conspiracies were proved, then prejudicial error has been committed, for Sobell was jointly tried with major atomic energy spies

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[15] Sobell's counsel argued that on the basis of the indictment and information obtained from an unsuccessful attempt to get a more enlightening bill of particulars, it was impossible for Sobell to ask for a severance earlier on these grounds. Sobell's position seems well taken, although it is not necessary to decide any question of waiver involved in his failure to request severance.

whose acts and declarations were held binding upon him. [fol. 2526] What distinguishes a single conspiracy from several related ones is a single unified purpose, a "common end." This "common end" is in contradistinction to the "separate ends similar in character" which characterize multiple conspiracies. *United States* v. *McConnell*, 285 F. 164, 166 (E. D. Pa.). Thus the Supreme Court has said that defendants who separately secure fraudulent loans through banking institutions from a single governmental agency by means of a single broker have separate albeit similar ends, and lack the single unified purpose of co-conspirators. *Kotteakos* v. *United States*, 328 U. S. 750. On the other hand, salesmen who make illegal sales above ceiling price of a particular brand of whisky obtained from a particular wholesaler have a single unified purpose—to raise illegally the price of that whisky: "The whisky was the same. The agreements related alike to its disposition. They comprehended illegal sales in the guise of legal ones * * * The scheme was in fact the same scheme. The salesmen knew or must have known that others unknown to them were sharing in so large a project." *Blumenthal* v. *United States*, 332 U. S. 557-558.

A majority of this court have concluded, on the following grounds, that here there was a single unified purpose: The "common end" consisted of the transmission to the Soviet Union of any and all information relating to the national defense; such a single aim distinguishes this conspiracy from that in *Kotteakos*, where each defendant was interested in obtaining his own fraudulent loan only and not in the success of his fellow-borrowers. The case is closer to the *Blumenthal* situation, where all the salesmen had a united purpose to sell the shipment of whisky at an illegally high price. Sobell is confusing the particular part each conspirator played in the espionage activities with the end-all purpose of all the conspirators—the aiding of Russia by sending to it any and all kinds of secret infor- [fol. 2527] mation. It did not matter that Sobell knew nothing of the atomic episodes; he is nevertheless charged with the acts done by Greenglass, Gold and Rosenberg, in furtherance of the over-all conspiracy. The jury could and did reasonably find that Sobell consented to the dominant aim,

and so became a member of the Rosenberg-Greenglass-Gold conspiracy.

The writer of this opinion disagrees. He thinks that there was error, in this respect, which requires that Sobell be given a new trial. The balance of this paragraph sets out the writer's reasons for dissenting on this issue. Even if Sobell, on Elitcher's testimony, could reasonably be held as a member of the Rosenberg-Gold-Greenglass conspiracy, the question of his membership should have been submitted to the jury. Elitcher's testimony would have supported either of two inferences *i. e.*, that Sobell agreed only (1) to transmit certain kinds of military information to Russia or (2) that he agreed with the other conspirators to transmit "any military information of all kin-." The jury should have had the opportunity to choose between the inferences and to decide whether he actually joined the larger conspiracy. See *Lefco* v. *United States*, 74 F. (2d) 66, 69 (C. A. 3). "Nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it; if latecomers change that he is not liable for the change; his liability is limited to the common purposes while he remains in it." *United States* v. *Peoni*, 100 F. (2d) 401, 403 (C. A. 2, per Learned Hand, *C. J.*). The judge's instructions (quoted above) do not, I think, make it clear to the jury that Sobell in order to become a member of the larger conspiracy, had to agree to transmit all kinds of secret information, and not just certain kinds which he knew about.[15a] In effect, he charged that if the jury be-

[15a] Sobell's counsel, it is true, did not submit a correct request to charge on the question of whether the jury could infer one or two conspiracies from Elitcher's testimony. He did, however, ask for dismissal of the indictment at the end of the Government's case on the ground that two conspiracies were proved, and, again before the charge, he objected in advance to the judge's theory, already enunciated in denying the motion for dismissal of the indictment, that if the Government's evidence was believed, one conspiracy and not two had been proved. In the circumstances, then, the writer thinks that the judge, on his own motion, should have submitted the question of one or several conspiracies to the jury.

[fol. 2528] lieved Elitcher's testimony, Sobell was a member of the larger conspiracy charged in the indictment.

13. Sobell alleges that the prosecutor's ill attempts at courtroom humor and "questions" containing inadmissible testimony deprived him of a fair trial. After examining each such incident, we cannot agree that, despite the judge's cautioning instructions to convict or acquit on the evidence alone, they were so important as to effect the jury adversely. Many of the so-called "loaded" questions were withdrawn before answering; objections to others were sustained and the prosecutor admonished; nothing in his summation concerning the defendants seems to have exceeded the liberal limits of legitimate partizanship and argumentation our courts customarily allow counsel. It is of some significance that Sobell's counsel himself, at the end of the trial, indicated that he thought the prosecutor had conducted himself fairly: "I am willing to shake his hand after a job that we both had to do." Similarly the Rosenbergs' counsel at the end of the trial acknowledged the good behavior of the prosecutor.

14. The prosecution introduced as an entry "in the regular course of business" a card made by an Immigration Inspector at the time Sobell re-entered the United States, stating that he had been "Deported from Mexico." This evidence is attacked as both irrelevant and hearsay. But Sobell's forced return to the United States was certainly [fol. 2529] relevant to the government's theory that he had fled to Mexico to escape prosecution, for otherwise the jury might had inferred that he had returned voluntarily to stand trial. The hearsay objection is equally without merit. As an entry of this type is required in the case of every deportee from Mexico and was made by the border inspector in the course of his duties, it qualifies as a business entry under 28 U. S. C. § 1732, § 1733. The inspector who made the entry testified at the trial, and was available for cross-examination as to the extent of his observations and his reasons for making the entry.

15. At the end of the trial, after Sobell had been found guilty, his counsel made a motion in arrest of judgment based upon an affidavit by Sobell that he had been illegally abducted by Mexican police from his residence in Mexico City and taken across the border into the United States

where he was delivered into the immediate custody of waiting United States agents. Sobell asked the trial judge to conduct a hearing on the question of whether United States officials had participated in, or instigated, his illegal kidnapping. Sobell claims that his conviction would be a nullity if it were proved that the government thus secured jurisdiction over his person in violation of United States law and international agreement.

The government answers that, even if United States officials had participated in Sobell's alleged kidnapping, the court in a criminal case, unlike a civil case, would still have jurisdiction over his person, as long as he was physically present at the trial. There appears to be authority to support this position. *Ker* v. *Illinois*, 119 U. S. 436; *Mahon* v. *Justice*, 127 U. S. 700; *United States ex rel. Voigt* v. *Toombs*, 67 F. (2d) 744 (C. A. 5); *United States* v. *Unverzagt*, 299 F. 1015 (W. D. Wash.) aff'd 5 F. (2d) 492 (C. A. 9), cert. den. 269 U. S. 566; *United States* v. *Insull*, 8 F. Supp. [fol. 2530] 311 (N. D. Ill.); *Ex parte Lopez*, 6 F. Supp. 342 (S. D. Tex.); *Gillars* v. *United States*, 182 F. (2d) 962 (App. D. C.); *Chandler* v. *United States*, 171 F. (2d) 921 (C. A. 1), cert. den. 336 U. S. 918. However, there are contrary arguments.[15b] But we need not now decide that question. For we think that Sobell waived his right to challenge personal

[15b] Both Supreme Court cases were decided before the federal anti-kidnapping statute passed in 1932, which would seem to forbid federal or state agents from kidnapping and transporting a defendant in foreign commerce. See *Collins* v. *Frisbie*, 189 F. (2d) 464 (C. A. 6), cert. granted —— U. S. ——, now being considered by the Supreme Court. In addition, the two Supreme Court cases involved kidnapping by state agents, and the subsequent exercise of jurisdiction by state courts over the kidnapped defendants. *McNabb* v. *United States*, 328 U. S. 332, laid down the rule that a defendant in a federal criminal trial, whatever the practice in state courts, could not be convicted on the basis of confessions obtained by federal agents in violation of a federal statute. Whether or not the Court would extend the *McNabb* policy to cover jurisdiction of the defendant's person obtained by a federal court through the illegal acts of federal officers, we do not know.

jurisdiction in this trial. Rule 12 (b)(2) of the Federal Rules of Criminal Procedure says: "Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, * * *" Yet Sobell made no such pre-trial motion challenging jurisdiction over his person, despite the fact that all the information contained in the post-trial affidavit was known to him at that time. When the government introduced evidence to show that Sobell had been legally deported from Mexico (evidence clearly contradictory to Sobell's present assertion), he made no move to bring to light the facts of his alleged illegal abduction.[15c] [fol. 2531] He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic. Under Rule 34, motions in arrest of judgment are allowed only (1) where the indictment charges no offense and (2) where the court had no jurisdiction over the offense charged. This situation, we think, falls into neither category. See *United States* v. *Zisblatt*, 172 F. (2d) 740, 741-742 (C. A. 2); *United States* v. *Bradford*, —— F. (2d) —— (C. A. 2, January 24, 1952). Personal jurisdiction can be waived in a criminal as well as a civil case. See *Pon* v. *United States*, 168 F. (2d) 373, 374 (C. A. 1). *United States* v. *Rauscher*,

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[15c] In his reply brief, Sobell says: "We do not contend, as the Government intimates that its violation of domestic or international law exempts Sobell from trial, but merely that he should be restored the choice * * * of entering the United States voluntarily or involuntarily. * * * What was violated was his right to be free from unlawful molestation or assault by his own Government; and his right not to be convicted by an 'admission' wrested from him by a violent act." It seems particularly inconsistent, therefore, for Sobell not to have introduced evidence, during the trial, of his kidnapping to contradict the Government's evidence of legal deportation.

119 U. S. 407, cited by Sobell, allowed a defendant to move in arrest of judgment on the ground that he had been tried and convicted of an offense other than the one for which he had been surrendered to the United States by Great Britain pursuant to an extradition treaty. There, however, the defendant also challenged personal jurisdiction before trial, and no question of the timeliness of his motion was involved.

16. The trial judge sentenced Julius and Ethel Rosenberg to death. The statute under which they were convicted provides that whoever violates the pertinent subsection "in time of war shall be punished by death or by imprisonment for not more than thirty years." 18 U. S. C. Sec. 794(b). Congress had the power to prescribe the death penalty for wartime espionage. See *Cramer* v. *United States*, 325 U. S. [fol. 2532] 1, 45.[15d] This, these defendants do not deny. They claim, rather, that, even if they were properly convicted, it was unconstitutional and an abuse of discretion for the trial judge to impose the extreme penalty in their particular case, and that we must reduce their sentences. In support of that contention they assert the following: They did not act from venal or pecuniary motives; except for this conviction, their records as citizens and parents are unblemished; at the most, out of idealistic motives, they gave secret information to Soviet Russia when it was our wartime ally; for this breach, they are sentenced to die, while those who, according to the government, were their confederates, at least equally implicated in wartime espionage—Harry Gold, Emil Fuchs, Elizabeth Bentley and the Greenglasses—get off with far lighter sentences or go free

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[15d] Since §794(c) covers communication "in time of war" to "the enemy," it might possibly be urged that § 794 (b) was not intended to apply to acts, even in war-time, which are to "the advantage of a foreign nation" when that nation is not the nation with which this country is at war but which, at the time, is an ally. However, the legislative history contains nothing to support such an interpretation.

altogether.[16] Finally, they argue, the death sentence is unprecedented in a case like this: No civil court has ever imposed this penalty in an espionage case, and it has been imposed by such a court in two treason cases only.[17]

Unless we are to over-rule sixty years of undeviating federal precedents, we must hold that an appellate court has no power to modify a sentence. "If there is one rule in the federal criminal practice which is firmly established, it is that the appellate court has no control over a sentence [fol. 2533] which is within the limits allowed by a statute." *Gurra* v. *United States*, 40 F. (2d) 338, 340 (C. A. 8). See also, *e.g.*, *Beckett* v. *United States*, 84 F. (2d) 731, 733 (C. A. 6); *Scala* v. *United States*, 54 F. (2d) 608, 611-612 (C.A. 7); *Peterson* v. *United States*, 246 Fed. 118 (C. A. 4); *Wallace* v. *United States*, 243 Fed. 300, 310 (C. A. 7); *Feinberg* v. *United States*, 2 F. (2d) 954, 958 (C. A. 8); *Carpenter* v. *United States*, 280 Fed. 598, 601 (C. A. 4); *Smith* v. *United States*, 3 F. (2d) 1021 (C. A. 9); *Hodgskin* v. *United States*, 279 Fed. 85, 94 (C. A. 2); *United States* v. *Cohen*, 177 F. (2d) 523, 525 (C. A. 2); *United States* v. *Ward*, 173 F. (2d) 628, 630 (C. A. 2); *United States* v. *Gottfried*, 165 F. (2d) 360, 368 (C. A. 2); *Voege* v. *United States*, 270 Fed. 219 (C. A. 2).[18] In *Blockburger* v. *United States*, 284 U. S. 299, 305, the Supreme Court said: "Under the circumstances, so far as disclosed, it is true that the imposition of the full penalty of fine and imprisonment upon each

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[16] The information the Rosenbergs passed, they maintain, would have become known to Russia in a matter of a few years, either through disclosures of foreign research scientists who worked at Los Alamos or through research of Russian scientists.

[17] *Stephan* v. *United States*, 133 F. (2d) 87 (C.A. 6), cert. den. 318 U. S. 781; *United States* v. *Tomaya Kawakita*, 96 F. Supp. 824 (S. D. Cal.), aff'd 190 F. (2d) 506 (C. A. 9).

[18] This Court has said that where it considers a sentence unduly harsh, it will be more inclined to regard as harmful an error otherwise probably harmless. See *United States* v. *Hoffman*, 137 F. (2d) 416 (C. A. 2); *United States* v. *Trypuc*, 136 F. (2d) 900, 902. We have, however, found no such errors affecting the Rosenbergs.

count seems unduly severe; but there may have been other facts and circumstances before the trial court properly influencing the extent of the punishment. In any event, the matter was one for that court, with whose judgment there is no warrant for interference on our part."[19] Further [fol. 2534] discussion of this subject my colleagues think unnecessary. Consequently, the subsequent paragraphs express the views only of the writer of this opinion.

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[19] At one time the circuit courts had power to correct harsh sentences on appeal. Act of 1879, 20 Stat. 354; *Wynn* v. *United States*, 11 Fed. 57 (E. D. Mo.); *Bates* v. *United States*, 10 F. 92 (N. D. Ill.). The peculiar wording of the 1879 statute was omitted in conferring appellate power upon the newly created courts of appeal in 1891. Some courts therefore considered the 1879 law repealed by implication. *Freeman* v. *United States*, 243 F. 353. But *Ballew* v. *United States*, 160 U. S. 187 (1895) and *Hanley* v. *United States*, 123 Fed. 849 (C. A. 2), strongly suggest that the statutory powers given in the 1879 law to circuit courts had been incorporated by reference in the 1891 statute setting up the circuit courts of appeal. The fact is, however, that since 1891, federal upper courts have unswervingly denied themselves power to revise sentences on appeal.

The earliest and still most quoted federal authority rejecting the power to revise sentences on appeal is *Ex parte Watkins*, 7 Pet. 567, 574, where Story, *J.*, said: "But this court has no appellate jurisdiction to revise the sentences of inferior courts in criminal cases; and cannot, even if the excess of the fine were apparent on the record, reverse the sentence." At that time, however, the Supreme Court actually had no federal criminal appellate jurisdiction over either judgments or sentences; Story's remark, therefore, has extremely limited value nowadays.

The Supreme Court reduced what it considered an excessive fine imposed on the United Mine Workers for contempt. *U. S.* v. *U. M. W.*, 330 U. S. 258, 304. But there no statute authorizing particular punishment for contempt was involved; the fine was within the discretion of the trial judge, and the Supreme Court held the discretion abused. *Cf.* White, *J.*, dissenting, in *Weems* v. *United States*, 217 U. S. at 409-410.

That upper courts have or should have power to reduce harsh sentences has long been urged by some commentators. See, *e.g.*, Hall, *Reduction of Criminal Sentences on Appeal*, 37 Col. L. Rev. 521, 762 (1937). The existence of such power may seem the more desirable in these days when, in the recent words of the Supreme Court, "Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence."[20] In England, Canada, and in several of our states, upper courts have held that they may revise sentences while affirming convictions. But these rulings were based on statutory authority. 89 A. L. R. 295; *cf.* A. L. I. Code of Cr. Proc. sec. 459.

[fol. 2535] Some of these state courts find such authority in statutes conferring power to "affirm, modify or reverse" judgments on appeal.[21] An identical power—to "affirm, modify or reverse"—is given to federal courts of appeal and to the Supreme Court by 28 U. S. C. A. Sec. 2106. That provision dates back to the Judiciary Act of 1789. See *United States* v. *Illinois Surety Co.*, 226 Fed. 653, 664 (C. A. 7). No decision by the Supreme Court or any federal court

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[20] *Williams* v. *New York*, 337 U. S. 241, 248. See also *Morissette* v. *United States*, — U. S. — (January 7, 1952), as to the "substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution.

Radin writes that, in the Middle Ages, "Justice" popularly meant the gallows. Radin, A Juster Justice, in Legal Essays in Tribute to McMurray (1935), 537, 556. See London Times, Lit. Supp., January 4, 1952, p. 11: "It is not generally realized that down to the year 1826 the punishment of every felony in this country was death. * * *"

[21] See 89 A. L. R. 295; *Commonwealth* v. *Garramone*, 307 Pa. 507, 161 A. 733, 735; *State* v. *Ramirez*, 34 Id. 623, 203 Pac. 279; *Fritz* v. *State*, 128 Pac. 170, 8 Okla. Crim. 342; *Pittman* v. *State*, 84 Ark. 292, 105 S. W. 874; see also *Commonwealth* v. *Sterling*, 314 Pa. 76, 170 A. 258, 259.

The courts of more than a dozen other states have not so construed identically-worded statutes. See, *e. g.*, *State* v. *Fowler*, 59 Mont. 346, 196 Pac. 993, 995. See A. L. I. Code of Cr. Proc. sec. 459, Commentary.

of appeals seems to have cited or considered this statute in passing on the question of the power to reduce a sentence when a conviction is affirmed. Were this question *res nova*, this court should give that section serious consideration.[22]

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[22] The trial judge's determination of a proper sentence—no easy task—should turn on his evaluation of a host of factors, including the unique fact of the particular defendant's life, conduct and character. Where an upper court has authority to review and revise a sentence, its attempt to do so may be thwarted if the trial judge has not made public the bases of his determination (although, in some instances, a sentence may obviously be unduly harsh, no matter what the particulars of the defendant's life, etc.). In the instant case, the trial judge has publicly stated the grounds on which he based the death sentences: "Citizens of this country who betray their fellow-countrymen can be under none of the delusions about the benignity of Soviet power that they might have been prior to World War II. The nature of Russian terrorism is now self-evident. Idealism as a rationale dissolves." * * * "I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. The immediate family is brought to grief and when justice is meted out the chapter is closed. But in your case, I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country. No one can say that we do not live in a constant state of tension. We have evidence of your treachery all around us every day—for the civilian defense activities throughout the nation are aimed at preparing us for an atom bomb attack. Nor can it be said in mitigation of the offense that the power which set the conspiracy in motion and profited from it was not openly hostile to the United States at the time of the con-

[fol. 2536] Because, however, for six decades federal decisions (including that of the Supreme Court in *Blockburger* v. *United States, supra*) have denied the existence of such [fol. 2537] authority, it is clear that the Supreme Court alone is in a position to hold that Sec. 2106 confers author-

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spiracy. If this was your excuse the error of your ways in setting yourselves above our properly constituted authorities and the decision of those authorities not to share the information with Russia must now be obvious. * * * In the light of this, I can only conclude that the defendants entered into this most serious conspiracy against their country with full realization of its implications. The statute of which the defendants at the bar stand convicted is clear. I have previously stated my view that the verdict of guilty was amply justified by the evidence. In the light of the circumstances, I feel that I must pass such sentence upon the principals in this diabolical conspiracy to destroy a God-fearing nation, which will demonstrate with finality that this nation's security must remain inviolate; that traffic in military secrets, whether promoted by slavish devotion to a foreign ideology or by a desire for monetary gains must cease. The evidence indicated quite clearly that Julius Rosenberg was the prime mover in this conspiracy. However, let no mistake be made about the role which his wife, Ethel Rosenberg, played in this conspiracy. Instead of deterring him from pursuing his ignoble cause, she encouraged and assisted the cause. She was a mature woman—almost three years older than her husband and almost seven years older than her younger brother. She was a full-fledged partner in this crime. Indeed the defendants Julius and Ethel Rosenberg placed their devotion to their cause above their own personal safety and were conscious that they were sacrificing their own children, should their misdeeds be detected—all of which did not deter them from pursuing their course. Love for their cause dominated their lives—it was even greater than their love for their children."

A few minutes before, during defense counsel's remarks prior to sentencing, the judge said: "You overlooked one very salient feature, and that is that their activities didn't cease in 1945, but that there was evidence in the case of con-

ity to reduce a sentence which is not outside the bounds set by a valid statute.[23] As matters now stand, this court properly regards itself as powerless to exercise its own

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tinued activity in espionage right on down, even during a period dealing with a hostile nation."

On sentencing Greenglass to fifteen years' imprisonment, the judge said: "The fact that I am about to show you some consideration does not mean that I condone your acts or that I minimize them in any respect. They were loathsome; they were contemptible. I must, however, recognize the help given by you in apprehending and bringing to justice the arch criminals in this nefarious scheme, Julius Rosenberg and his wife, Ethel Rosenberg. You have at least not added to your sins by committing the additional crime of perjury. You confessed and told a complete story in this case and it has been of great assistance to the Government. I realize the courage that was required for you to give your testimony, and I must say that you were the recipient of the best kind of legal advice in doing so. It is obvious that the Government gave due consideration to your assistance in their recommendation. I have to be realistic in a situation such as this, and I recognize that despite my own inclination to be more severe on your sentence, due to the revolting nature of this offense, I must subordinate my own feeling. Our national security is more important than any personal feeling that I might have on the subject, and it is indeed more important, I think, than the punishment of any single individual; and by your assistance in this case you have helped us strike a death blow to the trafficking in our military secrets, to the advantage of a foreign nation."

[23] The reluctance of upper courts to interfere with the sentencing process may perhaps, at least in part, be due to the existence of the executive's pardoning power, and in part to a desire not to engage in a most difficult undertaking. That process calls for training and specialized knowledge of a kind which the education of few judges provides. See Page, *The Sentence of the Court* (1948), which treats of the English judiciary, but seems substantially applicable to ours. Page points out that among English judges it "could scarcely be claimed that * * * there is any agreed and commonly accepted principle guiding their selection of

judgment concerning the alleged severity of the defendants' sentences.[24]

[fol. 2538] The Rosenbergs, however, advance a different argument, *i. e.*, that, although the statute expressly and validly permits death sentences, we do have the power and the duty to order these particular death sentences reduced because they violate the Eighth Amendment of the Constitution, which forbids any "cruel and unusual punishment." Several courts have ruled that a sentence within the limits of a valid statute cannot amount to "cruel and unusual punishment," that, when a statute provides for such punishment, the statute only can be thus attacked. *Johnson* v. *United States*, 126 F. (2d) 242, 251 (C. A. 8); *Beckett* v. *United States*, 84 F. (2d) 731 (C. A. 6); *Hemans* v. *United States*, 163 F. (2d) 228, 237-238 (C. A. 6, cert. den. 332 U. S. 801); cf. *Weems* v. *United States*, 217 U. S. 349. No federal decision seems to have held cruel and unusual any sentence imposed under a statute which itself was constitutional.[25] But let it be assumed that, even if the statute

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punishment," and quotes Mr. Justice McCardle who said: "Anyone can try a case. That is as easy as falling off a log. The difficulty comes in knowing what to do with a man once he has been found guilty." However, as noted above, it is arguable that the difficulty makes it the more desirable that upper courts be able to review and modify sentences.

[24] Where an upper court has such power, the criterion used to determine whether a sentence is too harsh would seem to be that court's own judgment—not the "common conscience."

It has been held that, in such circumstances, the upper court may consider, for such purposes, the quality of the evidence on which the verdict rests. See *Fritz* v. *State*, 8 Okla. 342, 128 Pac. 170. So here, had this court such power, it might take into consideration the fact that the evidence of the Rosenbergs' activities after Germany's defeat (as well as of their earlier espionage activities) came almost entirely from accomplices.

[25] See, however, *Shultz* v. *Zerbst*, 73 F. (2d) 668, 670 (C. A. 10); *Moore* v. *Adehold*, 108 F. (2d) 729, 732 (C. A. 10); *Dryden* v. *U. S.*, 139 F. (2d) 487, 488 (C. A. 8); *United States* v. *Sorcey*, 151 F. (2d) 899, 902-903 (C. A. 7). These cases

[fol. 2539] authorizing a sentence does not violate the Eighth Amendment, still a particular sentence, within the literal terms of that statute, may do so, because of the

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say that a sentence authorized by statute usually will not be cruel and unusual punishment, but are not altogether clear as to whether a sentence may be such, even if the statute is not. In this respect, see Mr. Justice Field, dissenting, in *O'Neil* v. *Vermont*, 144 U. S. 323, 340: "It is no matter that by cumulative offenses, for each of which imprisonment may be lawfully imposed for a short time, the period prescribed by the sentence was reached, the punishment was greatly beyond anything required by any human law for the offences."

Cf. *In re Kemmler*, 136 U. S. 436, 446, quoted in *Francis* v. *Resweber*, 329 U. S. 459, footnote 4: "* * * but the language in question as used in the constitution of the State of New York was intended particularly to operate upon the legislature of the State to whose control the punishment of the crime was almost wholly confided." *Cf.* Story, Commentaries on the Constitution, S. 1903: "* * * the provision would seem to be wholly unnecessary in a free government, since it is scarcely possible that *any department* of such a government should authorize or justify such atrocious conduct. * * *" The inhibition is "directed * * * against all punishment which by their excessive length or severity are greatly disproportioned to the offenses charged." Field, *J.*, in *O'Neil* v. *Vermont*, *supra*, 339-340.

In *Francis* v. *Resweber*, *supra*, the Court considered whether an electrocution, after a first attempt to electrocute had failed for mechanical reasons, would be so cruel and unusual as to violate the due process clause, even if authorized by the Louisiana statute. In *Johnson* v. *Dye*, 175 F. (2d) 250 (C. A. 3), rev'd on other grounds, 338 U. S. 864, the court called the treatment of Georgia chain-gang prisoners "cruel and unusual punishment" and so a violation of the due process clause of the Fourteenth Amendment. Perhaps it can be said that that treatment was so common in Georgia as to have become part of the penalties prescribed by the statute. See also *Kenimer* v. *State*, 81 Ga. App. 437, 59 S. E. (2d) 296.

specific circumstances of the case.[26] No such circumstances exist in this case. The test of a "cruel and unusual punishment" urged by the defendant—*i.e.*, that "It shocks the conscience and sense of justice of the people of the United States"[27] is not met here.

The test (unlike that applied when an upper court has discretion to modify sentences)[28] invites the criticism that [fol. 2540] it shifts the moral responsibility for a sentence from the consciences of the judges to the "common conscience."[29] But that criticism aside, this test counts against the defendants, for it means that this court, before it reduces a sentence as "cruel and unusual," must have reasonably good assurances that the sentence offends the "com-

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[26] *United States* v. *Ragen*, 54 Fed. Supp. 973 (N. D. Ill.), aff'd 146 F. (2d) 349. Perhaps this is but an elliptical way of saying that, if the statute permitted such a sentence, the statute would be unconstitutional, and therefore the statute should be so interpreted as to preclude that sort of sentence.

[27] *Id.*

The test may have been derived from the language of some Supreme Court decisions: "Taking human life by unnecessarily cruel means shocks the most fundamental instincts of civilized man"; *Francis* v. *Resweber, supra.* P. 473 (Burton dissenting): " * * * a punishment at the severity of which, considering the offenses, it is hard to believe that any man of right feeling and heart can refrain from shuddering"; *O'Neil* v. *Vermont*, 144 U. S. 333, 340 * * * "the judgment of mankind would be that the punishment was not only an unusual but a cruel one, and a cry of horror would rise from every civilized and Christian community of the country against it." *Id.*

[28] See note 24, *supra.*

[29] See Cahn, *Authority and Responsibility*, 51 Col. L. Rev. (1951) 838. Cahn's thesis suggests that a trial judge, in fixing a sentence, ought—after examining external data, including especially professional judgments in like cases—to rely on his own internal valuation and should not use the "common conscience" as a "scape-goat." See also Gray, *The Nature and Sources of Law* (2d ed. 1921), 287ff.

mon conscience." And, in any context, such a standard—the community's attitude—is usually an unknowable.[30] It resembles a slithery shadow, since one can seldom learn, at all accurately, what the community, or a majority, actually feels.[31] Even a carefully-taken "public opinion poll" would be inconclusive in a case like this.[32] Cases are conceivable where there would be little doubt of a general public antipathy to a death sentence. But (for reasons noted below) this is not such a case.

In all likelihood, it would be—if the evidence were as the Rosenbergs depict it: They say that they were sentenced to death, not for espionage, but for political unorthodoxy and adherence to the Communist Party, and that (assuming they are guilty) they had only the best of motives in giving information to Russia which, at the time, was an ally of this country, praised as such by leading patriotic Americans. But the trial judge, in sentencing the Rosenbergs, relied on record evidence which (if believed) shows a very different picture. If this evidence be accepted, the conspiracy did not end in 1945, while Russia [fol. 2541] was still a "friend," but, as the trial judge phrased it, continued "during a period when it was apparent to everybody that we were dealing with a hostile nation." For, according to government witnesses, in 1948 Julius Rosenberg was urging Elitcher to stay with the Navy Department so that he might obtain secret data; in 1948, Rosenberg received "valuable" information from Sobell; in 1950, Rosenberg gave Greenglass money to flee to Russia. This court cannot rule that the trial judge should have disbelieved those witnesses whom he saw and heard testify.[32a] And, although the indictment did not charge,

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[30] Cf. *Schmidt* v. *United States*, 177 F. (2d) 450, 451-452 (C.A. 2).

[31] Cf. *Johnson* v. *United States*, 186 F. (2d) 588, 590 (C.A. 2).

[32] Cf. *Roth* v. *Goldman*, 172 F. (2d) 788, 796 (C. A. 2, concurring opinion).

[32a] The situation is not like that which exists when an upper court has authority to modify a sentence which is within the limits of a valid statute. See note 24, *supra*.

and therefore the jury did not find, that the Rosenbergs intended to harm the United States, the trial judge could properly consider the injury to this country of their conduct, in exercising his discretion as to the extent of sentences within the statutory limits. Cf. *Williams* v. *New York*, 337 U. S. 241, 251-252: "It is urged, however, that we should draw a constitutional distinction as to the procedure for obtaining information where the death sentence is imposed. We cannot accept the contention. Leaving a sentencing judge free to avail himself of out-of-court information in making such a fateful choice of sentences does secure to him a broad discretionary power, one susceptible of abuse. But in considering whether a rigid constitutional barrier should be created, it must be remembered that there is possibility of abuse wherever a judge must choose between life imprisonment and death. And it is conceded that no federal constitutional objection would have been possible if the judge here had sentenced appellant to death because appellant's trial manner impressed the judge that appellant was a bad risk for society, or if the judge had sentenced him to death giving no reason at all. [fol. 2542] We cannot say that the due-process clause renders a sentence void merely because a judge gets additional out-of-court information to assist him in the exercise of this awesome power of imposing the death sentence."

We must, then, consider the case as one in which death sentences have been imposed on Americans who conspired to pass important secret information to Russia, not only during 1944-1945, but also during the "cold war." Assuming the applicability of the community-attitude test proposed by these defendants, it is impossible to say that the community is shocked and outraged by such sentences resting on such facts. In applying that test, it is necessary to treat as immaterial the sentences given (or not given) to the other conspirators, and also to disregard what sentences this court would have imposed or what other trial judges have done in other espionage or in treason cases.[33] For such matters do not adequately reflect the prevailing mood

[33] Cf. *Howard* v. *Fleming*, 191 U. S. 126, 135-136; *Collins* v. *Johnston*, 237 U. S. 502, 510.

of the public. In short, it cannot be held that these sentences are unconstitutional.[34]

Affirmed.

[fols. 2543-2544] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES, Plaintiff-Appellee,

v.

JULIUS ROSENBERG & ETHEL ROSENBERG, Defendants-Appellants

JUDGMENT—February 25, 1952

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, ad-

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[34] A sentence, although not "cruel and unusual," may violate the due process clause. *Townsend* v. *Burke*, 334 U. S. 736. There the Court held invalid a sentence imposed because of the trial judge's mistaken belief that the defendant was guilty of other crimes, and in a case where defendant was not represented by counsel. There is nothing equivalent here.

The Rosenbergs, of course, may ask the Supreme Court, considering 28 U. S. C. section 2106, to over-rule the decisions precluding federal appellate modification of a sentence not exceeding the maximum fixed by a valid statute, and to direct us accordingly to consider whether or not these sentences are excessive; or the Rosenbergs, pursuant to Federal Rule of Criminal Procedure 35, may move the trial judge for a reduction of their sentences; or, if those alternatives fail, these defendants may seek relief from the President. See *Biddle* v. *Perovitch*, 274 U. S. 480.

judged, and decreed that the judgments of said District Court be and hereby are affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fols. 2545-2550] In United States Court of Appeals for the Second Circuit

United States, Plaintiff-Appellee,

v.

Morton Sobell, Defendant-Appellant

Judgment—February 25, 1952

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 2551] [File endorsement omitted]

In United States Court of Appeals for the Second Circuit

[Title omitted]

Petition for Rehearing of Julius Rosenberg and Ethel Rosenberg—Filed March 11, 1952

The appellants above named respectfully petition this Honorable Court for a rehearing of the appeal in the above-

entitled cause, and in support of this petition, represent to the court as follows:

We reserve our position as to each of the points of appeal, but in this petition address ourselves solely to those features of the decision wherein we believe the court may be convinced its result is based upon the application of incorrect legal principles.

1. This Court accepted the appellants' contention that an essential element of the statutory crime of espionage [fol. 2552] is the "secrecy" of the material alleged to be the subject of the conspiracy to commit espionage, in the sense of the decisions in *Gorin* v. *United States*, 312 U.S. 19 (1941) and *United States* v. *Heine*, 151 F. 2d 813 (C. C. A. 20, 1945) cert. den. 328 U. S. 833. It rejects, however, the claimed invalidity of the indictment grounded on failure to allege expressly this constituent ingredient of the crime, upon the premise that Rule 7 (c) of the Federal Rules of Criminal Procedure permits the pleading of this element by implication from the "correct judicial interpretation" of the statutory language in which the indictment is drawn. This ruling contravenes well-settled doctrine.

While Rule 7(c) may have relaxed the strict rules of pleading in criminal prosecutions, "the fundamental functions and requirements of indictments have not been altered or modified". *Lowenburg* v. *United States*, 156 F. 2d 22, 23 (C.C.A. 10th, 1946), *Sutton* v. *United States*, 157 F. 2d 661 (C.C.A. 5th, 1946).

It has always been the rule that where a statute does not set out expressly and with certainty all of the elements necessary to constitute the offense, the indictment must descend to particulars and charge every constituent ingredient of which the crime is composed. *United States* v. *Cruikshank*, 92 U.S. 542 (1875); *United States* v. *Carll*, 105 U.S. 611 (1881); *United States* v. *Hess*, 124 U. S. 483 (1888); [fol. 2553] *Potter* v. *United States*, 155 U.S. 438 (1894); *Hagner* v. *United States*, 285 U. S. 427 (1932). The adoption of Rule 7 (c) did not break this line of judicial precedent. *United States* v. *Henderson*, 121 F. 2d 75 (App. D. C. 1941); *Frankfort Distilleries* v. *United States*, 144 F. 2d 824 (C.C.A. 10th, 1944) reversed on other grounds (324 U.S. 29); *Robertson* v. *United States*, 168 F. 2d 294 (C.C.A. 5th,

1948); *Carter* v. *United States*, 173 F. 2d 685 (C. A. 10th, 1949).

Concomitantly, the requirement that the elements of the crime cannot be pleaded inferentially remains equally good law.

> ". . . where the statute itself omits an essential element of the offense or includes it only by implication, the indictment nevertheless should allege it directly and with certainty. As has been well said, legislation may proceed by implication but good pleading may not."
>
> *Robertson* v. *United States, supra* at 295.

> "All material facts embraced in the definition of the offense must be alleged and omissions cannot be supplied by intendment or implication. The charge must be made directly, and not inferentially, or by way of recital. United States v. Hess, 1888, 124 U. S. 483, 8 S. Ct. 571, 573, 31 L. Ed. 516, where the definition of the crime is in generic terms, the charge must not be couched in the same terms but it must descend to particulars."
>
> *United States* v. *Waltham Watch Co.*, 47 F. Supp. 524, 529 (D. C. S. D. N. Y. 1942)
>
> *Accord: Kane* v. *United States*, 120 F. 2d 990 (C. C. A. 8th, 1941);
>
> *United States* v. *Hess, supra; United States* v. *Carll, supra.*

The force of this judicial doctrine cannot be avoided by [fol. 2554] casting the requirements of the *Gorin* and *Heine* cases in the framework of "an exception to [the] applicability" of the statute, since it is equally well-settled that where such an exception exists, the indictment must allege facts showing that the accused is not within the exception. *United States* v. *Waters*, 73 F. Supp. 72 (D. C. 1947); *United States* v. *English*, 139 F. 2d 885 (C. C. A. 5th, 1944); *United States* v. *Eisenminger*, 16 F. 2d 816 (D. C. D. Del. 1926); *United States* v. *Cook*, 84 U. S. 168 (1872).

This Court, therefore, in validating the indictment (here drawn in statutory language) which alleges the "secrecy"

of the documents only by "importation",* has misconceived and misapplied a long course of judicial precedent.

[fol. 2555] 2. The Court's over-simplification of the prohibitions of the Espionage Act, as interpreted by the *Gorin* case, namely, that ". . . the statute forbids nothing except . . . communication to a foreign government of secret material connected with the national defense . . ." (p. 675 of the printed opinion), betrays accuracy, and is the key to the fallacy of the Court's ruling on the appellant's constitutional contentions.

The terms of the statute forbid communication, not only to a foreign government, but to any person or combination of persons, not citizens of the United States, and the *Gorin* case does not authorize the Court's limitation of its language. Contrary to this Court's opinion, both the *Gorin* and *Heine* cases recognize that to prohibit such communication in an area so broad as that covered by the ever-expanding meaning of "national defense" under modern conditions of total warfare, would, in due process terms, establish an indefinite standard of guilt, and in First Amendment terms, constitute a "drastic repression of the free exchange

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* The suggestion of the Court, in footnote 2 at page 674 of the printed opinion, to the effect the constitutional requirement for a well-pleaded indictment could be satisfied by an inference of "secrecy" deduced from the overt act which alleged that Rosenberg received sketches of experiments conducted at Los Alamos, is strained. This assumes that a defendant, whose innocence is presumed, possesses a guilty knowledge, or at best, it places upon a defendant the obligation of having acquired or acquiring that same wide knowledge of public matters known to this learned Court. It may safely be said that there are many who have no comprehension of the significance of Los Alamos or experiments there carried out. Speculation on the extent of the defendants' knowledge is only overcome by a properly pleaded indictment.

It should be further mentioned that the Rosenbergs, like Sobell, moved the Court for a bill of particulars, although those documents formed no part of the record on appeal. This motion was denied in toto.

of information," unless restricted in some manner. The *Gorin* case, therefore, confined information relating to the "national defense" to "non-public" material, and, further, applied the "cure" of the statute's intent provisions. This Court followed suit in the *Heine* case.

But since "secrecy", under the *Gorin* and *Heine* cases [fol. 2556] is definable only with reference to a power delegated unconstitutionally, (See pp. 53-55 of the appellants' brief on appeal) to Congress and the military departments to establish what may or need not be secret under the same indefinite statutory standards, the limitations created by the *Gorin* and *Heine* cases must fall.

It follows that this Court was forced to find constitutional justification for the validity of the statute on the intent clauses. Its holding that the vagueness of the statute is cured where "bad faith" is established, overlooks the fact that such is not the "scienter" required by this law. The Espionage Act requires proof of the specific "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of a foreign nation." Should this intent requirement, in itself, be vague, as appellants' contend, the Court would be required to strike down the statute as "general in its description of the mischief to be remedied and equally general with respect to the intent of the actor . . ." *Herndon* v. *Lowry*, 301 U. S. 242, 258 (1937).

The Court avoids an examination of these crucial contentions by seeking shelter in the *Gorin* case. We are told that the issue of the vagueness of the intent clauses is no longer an open question because this Court believes that the Supreme Court would not have decided the *Gorin* case [fol. 2557] without having made a determination as to their validity. The appellants are constrained to insist the only evidence of the matters decided by the Supreme Court are its opinions which are express statements of what it, in fact, decided. In the *Gorin* case, the appellants did not challenge the vagueness of the intent clauses of the Espionage Act. Neither did the Supreme Court, on its own motion or otherwise, examine or treat with this question.

This Court, therefore, being unbound by precedent,

should re-evaluate its holding in light of its omission to consider this decisive issue.

3. The contentions of the appellants that the judicial misconduct of the trial Judge deprived them of a fair trial by jury in violation of the Sixth Amendment to the Constitution of the United States are dismissed because, in the opinion of the Court, ". . . the judge stayed within the discretion allowed him."

This opinion finds support, we are told, in the absence "in general" of any "purpose in the judge's questioning except that of clarification."

"Purpose" is made the criterion for the determination as to whether the "questioning" falls within or without the permissible boundaries of "clarification." In setting up a subjective standard, the Court has come in conflict with [fol. 2558] the established test that rules the objective effect of the judge's conduct on the jury the controlling factor.

> "The impartiality of the judge—his avoidance of the *appearance* of becoming the advocate of either one side or the other . . . is a fundamental and essential rule of especial importance in criminal cases." *Adler* v. *United States*, 182 F. 464 (C. C. A. 5th, 1910).
>
> "He (the trial judge) should sedulously avoid all *appearance* of advocacy as to those questions which are ultimately to be submitted to the jury . . ." *Frantz* v. *United States*, 62 F. (2nd) 737 (C. C. A. 6th, 1933).
>
> ". . . The judge should be careful to preserve an *attitude* of impartiality and guard against giving the jury any *impression* that the Court was of the opinion that the defendant was guilty." *Gomila* v. *United States*, 146 F. (2nd) 372 (C. C. A. 5th, 1944).
>
> "We are well aware of the damage in a situation where a judge assumes, *or appears to assume*, the role of advocate, and of the necessity for his sedulously maintaining an *attitude* of judicial impartiality between the accused and the accuser." *Ochoa* v. *United States*, 167 F. (2nd) 341, (C. C. A. 9th, 1945).
>
> (All emphases ours.)

A defendant in a criminal case is not under compulsion to probe a judge's mind to ascertain the purpose for his

conduct; his constitutional guaranties are a bulwark against a display of judicial partiality, the impact of which may tend to sway a jury against him. Judicial bona fides is an irrelevance *; honest or careless over-zealousness, like [fol. 2559] deliberate design, can produce the interdicted consequences.

The Court does not controvert the claim that the judge's conduct had the effect of tipping the scales against the appellants but justifies the imbalance as "an unavoidable incident of his unchallenged power to bring out the facts of the case." But the Court has disregarded the outer limits of this power which are circumscribed when its exercise generates in the minds of the jury avoidable bias and prejudgment. So, the judicial power to develop facts enters the forbidden field of inquiry when it wears the face of partisanship and manifests itself in prosecutive manner.

> "Prosecution and judgment are two quite separate functions in the administration of justice; they must not merge." *United States* v. *Marzano*, 149 F. 2d 923, 926 (C. C. A. 2nd, 1945).

Present here beyond cavil or dispute is a consistent course of judicial questioning that "(1) emphasized key points of the government's case; (2) protected and rehabilitated government witnesses; (3) commented on evidence as immaterial or dismissed contradictions brought out by defense attorney as not very important or convincing; (4) examined the defendants with hostility." The pattern was

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* The appearance of judicial partiality, though inadvertent, is prohibited. *Gomila* v. *United States*, *supra*, *Frantz* v. *United States*, *supra*. Defense counsels' characterization of the judge's conduct as "inadvertent", suggested by the Court to be "not compatible with the complaints now made," therefore is neither a waiver of the defense position, nor a reflection on the validity or good faith of their claim.

unfolded gradually, its force becoming fully apparent by the [fol. 2560] weight of cumulation.*

A record so permeated, is indelibly stamped with judicial unfairness, the essence of which cannot be concealed by euphemisms.

The Court suggests, nonetheless, that the trial judge had the right to animadvert on the merits of the case under his right to "comment outright on any portion of the evidence."

On the surface, this enunciation appears to be a restatement of previous decisions. It represents, however, a dangerous extension of, or departure from established authority. No precedent sanctions such arrogation of power to the federal judiciary.**

[fol. 2561] For the right to comment, it appears, has been approved only where the remarks are made in the charge of the judge. This must necessarily be the rule since a defendant "is entitled to the benefit of the presumption of innocence by both judge and jury till [*sic*] his guilt is proved." and the Court, which often boomerangs against their clients. See *Adler* v. *United States, supra.*

Adler v. *United States, supra.* The instant ruling empowers

* This explains why defense counsel made their motion at the end of the entire case.

The remarks of the Court that "a highly competent and experienced lawyer" waives the claim of judicial unfairness because he had made remarks, before the jury, upholding the dignity of the Court, ignores the lessons of "competent and experienced" trial lawyers. They mature to realize the danger of engendering conflict between them

** See e.g.

Cal-Bay Corporation v. *United States*, 169 F. 2d 15, (C.C.A. 9th, 1948);

United States v. *Marzano* (supra);

Frantz v. *United States* (supra);

Adler v. *United States* (supra);

Hunter v. *United States*, 62 F. 2d 217, C.C.A. 5th, 1932;

Williams v. *United States*, 95 F. 2d 685, C.C.A. 9th, 1937;

American Motorists Ins. Co. v. *Napoli*, 166 F. 2d 24, C.C.A. 5th, 1948.

a federal trial judge to emasculate, if not destroy, this inalienable right of an accused at any point in the course of a trial.

By inference, and certainly as applied to the facts of this case, the Court sanctions the propriety not only of "outright comment" but also of a persistent pattern of conduct insinuating the belief of the trial judge in the guilt of the accused, a form of expression of opinion, be it noted, more difficult for the jury to distinguish as judicial belief since not easily recognizable as such.

Thus, the Court has narrowed a defendant's protection against judicial impropriety and has run counter to the admonition of the Supreme Court that substantive safeguards be made "as impregnable as possible". *Blumenthal v. United States*, 332 U. S. 539 (1947). Instead, it has relegated an accused to the illusory refuge of a monitary instruction. Only the naive or myopic assume that prejudicial effects can be overcome by these warnings. *See Krulewitch v. United States*, 336 U. S. 440, 453 (1949).

Yet the Court insists that the cautionary charge of the [fol. 2562] judge cleansed the record of judicial misbehavior. While, in some instances, instructions to a jury may correct prior judicial aberrations, this is not the case. A jury, impregnated with three weeks of impressions of an attitude of constant judicial disfavor towards these defendants, coupled with its respect for the authority of the bench, must defy the accepted laws of psychological behavior to be able to free their assailed minds and to restore lost objectivity by the patent of a three-minute homily. Certainly in a capital case, legal abstractions should yield to the facts of life.

4. The Court rules that "an American's devotion to another country's welfare . . . has relevance . . . as a possible motive for his spying or on a possible intent to do so." (Opinion p. 652).

This rule is inapposite in the context of the evidence introduced below. The Court itself delineates the prosecution's evidence as merely showing "that the defendants expressed a preference for the Russian social and economic organization over our own." Such expressions denote no more than an academic leaning to a social or political

theory; they connote no "devotion to another country's welfare."

Indeed, they are expressions concerning which the Su- [fol. 2563] preme Court has declared:

> "Such testimony is to be scrutinized with care to be certain the statements are not expressions of mere lawful and permissible differences of opinion with our own government or quite proper appreciation of the land of birth." *Haupt* v. *United States*, 330 U. S. 631, 642 (1947).*

We submit the instant ruling is in direct conflict with the *Haupt* doctrine.

The implications of the decision are portentous. No more potent weapon in the arsenal of censorship of freedom of thought has yet been devised. Fear will stalk the individual from the cradle to the grave lest attachment to social, economic or political ideas, other than the orthodox or insular, may, some day, ghost-like, rise to haunt him as material evidence in criminal prosecution for high crimes. The dangers of the concept it has sired should convince the Court of the imperative need to reconsider and reverse its opinion.

[fol. 2564] 5. The Court rules that membership in the Communist Party, *per se*, is competent evidence that a member subscribes to the alleged tenets of the Party, among them, the obligation to go along with orders to the Party from the Soviet Union to "propagandize, spy and sabotage . . ." on behalf of the Soviet Union.

Apart from the appellants' strenuous contentions that the prosecution failed to show membership of the Rosenbergs or that the Communist Party did have any such platform or principles, we press the total absence of evidence

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* The misgivings of the Court in the *Haupt* case were articulated after the decision in *United States* v. *Molzahn*, 135 F. 2d 92 (C.C.A. 2nd, 1943) and were meant to act as a brake upon the predilections of this Court to permit lawful expressions of opinion to be utilized as evidence of criminal propensity. At any rate, the proof presented in the *Molzahn* case, as has been demonstrated, was qualitatively different from the present case.

to indicate that the Rosenbergs, if members, personally adhered to these dictates or even had knowledge of them.

The Supreme Court stated in *Schneiderman* v. *United States*, 320 U. S. 118, 136 (1943):

> "That under our tradition beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles."

This doctrine is binding upon the Court; the present ruling abrogates this well-settled precedent and should be repudiated.

In the absence of proof of personal acceptance, the entire evidentiary structure erected by the Government had no relevance or place in the trial. The Court's concession of the highly inflammatory nature of the testimony underscores the injury to the appellants by the admission of [fol. 2565] such evidence.

Finally, it is novel to hear that a defendant should forfeit his constitutional right to a jury trial even in a capital case, to avoid the effects of this prejudicial matter.* Buried is the power and responsibility of an appellate court to control the "discretion" of a trial court so as to secure an accused a fair trial before a jury.

6. It is disquieting to observe the Court's failure to treat with the basic error concerning introduction in evidence of the "Julius"-Bentley telephone conversations, asserted by the appellants Rosenberg to be "the most devastating single blow that was dealt to the defendants' chance for a fair trial." Confining its consideration to the adequacy of the foundation laid for the admission of the

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* The implied assurance that a judge is less likely to indulge his political presumptions with respect to the Communist issue affords a defendant dubious security for waiver of a jury trial.

testimony,** the Court does not examine the issue raised as [fols. 2566-2567] to the *competence* of the evidence to prove the crime itself or any element of the crime.

The evidence had the purport and effect of linking Julius Rosenberg with the Golos-Bentley spy apparatus, or, at the very least, of indicating his prior association with persons who were notoriously spies. But the Golos-Bentley group, according to the Government, operated only before the inception of the instant alleged conspiracy and the record is barren of any proof that the present conspiracy had its genesis in the former or that there was any identity of personnel or objective between the two.

Under this state of facts, the established authorities record their unequivocal condemnation of the introduction by the prosecution of evidence tending to connect the accused with another crime or a defendant's evil character to establish a probability of his guilt. These authorities are fully collated for the Court in the appellants' brief on appeal at pp. 124-126.

** The appellants must also express to the Court their apprehension over its approval of the circumstantial base which it deems adequate for the introduction of the "Julius"-Bentley telephone conversations. The Court shows itself willing to rely on the sole fact that Julius Rosenberg and Bentley may have known each other, during an unspecified period of time, as sufficient assurance of the likelihood that specified telephone calls, occurred at a specific time. Pragmatically, the fact that two people are acquainted, or even had conversed on the telephone, is a tenuous base upon which to build an inference that they engaged in a particular telephone call at a particular time. Jarvis v. United States, 90 F. 2d 243 (C. C. A. 1st, 1937) cert. den. 302 U. S. 705, relied on by the Court, as do all the other authorities, does pin-point the questioned telephone call as to time; moreover, present also were additional circumstances which excluded the possibility that the antiphonal speaker was anyone but the party charged.

We urge our right to a pronouncement of the Court on this vital issue.*

7. The Court rejects the appellants' point concerning the obligation of the trial Court to cause to be read to the jury the cross-examination of Ruth Greenglass upon re- [fol. 2568] quest of the jury for the "testimony" of this witness.

Although cited by the appellants, the Court ignores its own decision in *United States* v. *Compagne*, 146 F. 2d

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*The Court's ruling is equally questionable with respect to the introduction of evidence concerning the "theft" of a proximity fuse. This evidence to be competent to prove the crime charged must be supported by proof of its "secrecy" and relation to the national defense. Its competence to be introduced as probative only of intent, similarly, is dependent on such proof, for without it, and thus without evidence of the identity of this other crime with the crime charged, its admissibility for that purpose would be proscribed. See appellant's brief on appeal, pp. 126-127. The Court's opinion seeks to relieve the prosecution of its burden to prove that the proximity fuse related to the national defense by the weight of its own knowledge. Again the appellants must suggest the learned Court's overestimation of the knowledge of the average man and juror on this technical subject. Moreover, since the government did not request the trial court to take judicial notice of the relation of the proximity fuse to the national defense, the jury was afforded no opportunity to secure a rational basis from which to infer this nexus.

The further inference which the Court permits itself of the "secrecy" of the proximity fuse, can only be based upon its failure to review that the "secrecy" prescribed by the Gorin and Heine cases, does not carry the dictionary definition, but signifies "non-public" in the sense that Congress or the military departments have restrained its publication, and that it had not, in fact, been published. A presumption of "secrecy", in this sense, is not within the competence of the Court. Its ruling, therefore, would seem to controvene the established rules for the admission of such testimony.

524 (C.C.A. 2nd, 1944), holding that a request by defense counsel to that effect, as was made here, must be favored.*

8. The Court, by virtue of its misconception of the appellants' contentions relating to the death sentence, fails to reach the constitutional argument upon which the appellants rely. The Court asserts that the appellants claim that the sentence was "unconstitutional and an abuse of discretion for the trial judge to impose the extreme penalty in their particular case, and that we must reduce their sentences."

The appellants never urged the invalidity of the sentence as an "abuse of discretion"—this was a concept insinuated by the Government—and never asked the Court to *reduce* the sentence. The appellants pressed the unconstitutionality of the sentence, as in violation of the Eighth Amend- [fol. 2569] ment, and asked that the judgment imposing it be *reversed*, as would any other unconstitutional judicial action.

The Court, relying upon its lack of power to *modify* sentence, however, refused to examine appellants' further arguments. Only the obiter dictum of Judge Frank purports to do so.*

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* Whether or not the *Compagne* case mandated the trial Court to accede to this defense request, it is misleading to spell out of the instant situation a lack of desire of the jury to hear the reading of the cross-examination. The denial of the defense request, in the presence of the jury, could not have been construed as an invitation to the jury to insist on such reading. On the contrary, the denial was not only a discouragement, but, to the lay minds of the jury, reasonably could have represented a conclusive ruling disapproving the propriety of such a further request on their part.

* Judge Frank, similarly misconceiving the arguments of the appellants, ascribes to them the intention of having the Court apply, as the standard for determining the constitutional validity of the sentence, the test that the sentence "shocks the conscience and sense of justice of the people of the United States". By resorting to this "community-attitude" test, *not* urged by the appellants, the Judge, after denying his capacity to determine the commu-

Under the unique facts of this case, which juvenate the novel question presented to the Court, the appellants submit that a determination on the merits of their claim, should not be disdained.

9. The Espionage Act, as not construed by this Court, and applied to the facts of this case, violates Article III, Section 3 of the Constitution of the United States.

The appellants were tried as "traitors". In his open-[fol. 2570] ing remarks to the jury, United States Attorney, characterized the defendants as "traitorous Americans" (R. 229), their alleged criminal conduct as "traitorous activities" (R. 230), and promised the jury that it would find "overwhelming" the "evidence of these traitorous acts". (R. 232). His summation was punctuated with pointed references to the "treason" of the defendants (see, e.g. R. 2282, 2284), and was climaxed by an appeal for the conviction of "these traitors" (R. 2313).

The appellants were sentenced as "traitors", to the penalty traditionally accorded treason. See, *United States* v. *Greathouse,* 26 Fed. Cas. No. 15, 254; Hurst, *Treason in the United States,* 58 Harv. L. Rev. 395, 425. Their alleged "betrayal" evoked the wrath of the trial judge (R. 2449-53).

In essence, the appellants labored under the accusation of treason with the "passion-arousing potentialities", whose virulence impelled the incorporation of the restrictive treason clause embodied in the Constitution. *Cramer* v. *United States,* 325 U.S. 1, 45, 48 (1945).

This Court's decision transmutes, however, an objection,

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nity attitude, rejects the alleged argument of the appellants by reaching the conclusion that "it is impossible to say that the community is shocked and outraged by such sentences."

The appellants actually pressed upon the Court, and documented fully (see appellants' brief on appeal at pp. 135-142) that the sentence was imposed for political reasons, and, by its coercive power, to secure political conformity, a condition against which the Eighth Amendment was designed to stand as a citadel.

otherwise relegated to the charge of prejudicial unfairness, to the dignity of a constitutional challenge.

Article II, Section 3 of the Constitution declares:

> "Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them Aid and Comfort. No Person [fol. 2571] shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." *

This constitutional prescription, on its face, and by judicial interpretation, establishes two essential elements of the crime of treason—adherence to the enemy and rendering him aid and comfort. *Cramer* v. *United States*, *supra*.

This Court rules that the statutory intent of the Espionage Act, to injure the United States or to advantage a foreign nation, is established by evidence of "an American's devotion to another country's welfare . . ."(p. 682 of the printed opinion). Conjoined with adherence to the rationale of the *Gorin* case,** that potential enmity is the equivalent of present enemy status, and coupled with proof of violation of the substantive proscriptions of the Espionage Act,*** this Court creates a complete identity between the elements of the crime of espionage and the crime of treason. The prof authorized here, against appellants' [fol. 2572] unavailing protests, would have equally estab-

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* Section 2381 of Title 18 of the United States Code provides that the death penalty may be imposed for violation.

** ". . . No distinction is made between friend or enemy. Unhappily the status of a foreign government may change." *Gorin* v. *United States*, *supra* at pp. 29-30.

*** The communication, delivery or transmittal of certain materials relating to the national defense.

lished every element of treason.* The imposition of the sentence of death highlights the identity.**

The authorities are insistent that the requirements of treason clause can neither be overridden nor circumvented by "giving the same offense a different name". *Cramer* v. *United States, supra.* ". . . Where [a] defendant is charged with conduct involving all the elements of treason within the constitutional definition, and the gravamen of the accusation against him is to aid its [the country's] enemies, it would seem in disregard of the policy of the Constitution to permit him to be tried under another charge than treason." Hurst, *Treason in the United States, supra* at p. 421. See also: *Wimmer* v. *United States*, 264 F. 11 (C.C.A. 6th, 1920), cert. den. 253 U.S. 494.

[fol. 2573] The appellants, thus subjected to a treason prosecution, under the camouflage of a conspiracy to commit espionage charge, were convicted without the constitutional safeguards afforded persons accused of treason, namely the prerequisite of "Testimony of two Witnesses to the same overt Act." And the Supreme Court has strictly enforced

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*Cf. *Ex parte Quirin*, 317 U.S. 1 (1942), where the court on its own motion raised and disposed of the cogency of an argument that the accused could have only been charged with treason, on the ground that the crimes were not identical. Furthermore, its decision was based alone on a resolution of the conflict of the jurisdiction of military and civil authority.

** Were this Court to conclude that the instant crime, on the record presented here, is not tantamount to treason, we urge a re-examination of our contentions concerning the invalidity of the sentence as constituting cruel and unusual punishment. "There is the possibility that Congress might be restrained by the constitutional ban on cruel or unusual punishments from imposing the highest penalties for certain conduct, unless it were held to mount to the level of treason." Hurst, *Treason in the United States, supra* at p. 423.

these requirements to reach each and every essential element to establish the crime. *Cramer* v. *United States, supra.**

Were these appellants prosecuted for treason and accorded the protections secured to them by the Constitution, they would not have been compelled to stake their lives on impeachable and loose evidence introduced in the dragnet of conspiracy prosecutions. Nor had the Government the choice to elect its measure of proof to obtain a conviction. "The [treason] provision was adopted not merely in spite of the difficulties put in the way of prosecution but because of them. *Cramer* v. *United States, supra* at p. 48.

Hence, the entire proceeding below was in derogation [fol. 2574] of the Constitution of the United States and should be reversed.

Emanuel H. Bloch, Attorney for Appellants, Julius Rosenberg and Ethel Rosenberg.

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* Some of the alleged overt acts here, because innocent on their face, would have been incompetent to prove treason. Others, otherwise competent on a treason charge, were not proved by the testimony of two witnesses. The proof of intent here was totally inadequate to meet the standards demanded by the courts. *Cramer* v. *United States, supra.* It is impossible to tell, on the jury's general verdict, whether they selected as evidence for conviction, that which would have satisfied treason criteria.

[fol. 2575] STATE OF NEW YORK,
County of New York, ss:

Emanuel H. Bloch, being first duly sworn, on oath certifies and says:

He is the attorney for the appellants Julius Rosenberg and Ethel Rosenberg in this cause; that he makes this certificate in compliance with Rule 28 of this Court; that in his judgment the within and foregoing petition for rehearing is well founded and is not interposed for delay.

Emanuel H. Bloch.

Subscribed and sworn to before me this 11th day of March, 1952. Gloria Feinman, Notary Public, State of New York. No. 41-1182450. Qualified in Queens County. Certs. filed with Queens, N. Y., Bronx & Kings County Clerk & Register Offices. Commission Expires March 30, 1953.

[fol. 2576] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REHEARING FOR APPELLANT MORTON SOBELL—Filed March 11, 1952

To the United States Court of Appeals for the Second Circuit and the Judges Thereof:

Comes now Morton Sobell, an appellant in the above-entitled cause, and presents this, his petition, for a rehearing of the above entitled cause, and, in support thereof, respectfully shows,

I

The views of the majority of the Court on the question of whether there was more than one conspiracy proved, are so stated as to vitiate entirely the protection which the *Kotteakos* case was intended to afford against "trans-

ference of guilt from one to another across the line separating conspiracies" (328 U. S. 750, 754).

We deferentially submit that the majority has failed to apprehend that the rule it has laid down in permitting "a single unified purpose" to be found in the imputation of [fol. 2577] a "common end consist[ing] of the transmission to the Soviet Union of *any and all* information" (slip op. p. 694, emph. supp.) is one which has the necessary effect of obliterating the "line separating conspiracies", whenever they have an overlapping participant and a parallel objective.

The approach which the majority adopts, as presented in Judge Frank's opinion, is difficult to distinguish from that of the trial judge in the *Lekacos* case, which this court disapproved, 151 F. 2d 172-3. In the view of the majority it is suggested that the case of *Kotteakos* can be differentiated from that of Sobell, because in the former "each defendant was interested in obtaining his own fraudulent loan only and not in the success of his fellow-borrowers" (slip op. p. 694). There was no *interest* in the present case, shown or even claimed to have existed, on the part of Sobell, in the success of the atomic-information project.

If the majority's approach be now applied to the fact situations in cases heretofore adjudicated to have involved separate conspiracies, the force of our contention on this rehearing becomes manifest. The *Kotteakos* situation becomes one of "securing fraudulently from the F. H. A. *any and all money* that could be obtained", *Canella* v. *United States*, 157 F. 2d 470, becomes a case of "depriving the United States of the faithful services of Canella on *any and all occasions* that might present themselves"; *Marcante* v. *United States*, 49 F. 2d 156 can be made into a single conspiracy by describing it as one to "violate the Prohibition Act by selling *any and all* alcoholic beverages that might come into the hands of the defendants."

An illustrative situation was presented on petition of defendant Rudy for rehearing in *United States* v. *Liss*, 137 F. 2d 995, 1006, and this court declined to accept the "any and all" method of merger, pressed upon it by the U. S. Attorney there: The majority had held on the original appeal that *Rudy* was in fact in a separate con-

spiracy with two of his co-defendants—but declined to reverse the conviction, under the *Berger* (295 U. S. 78) [fol. 2578] rule. But Rudy's counsel claimed, in petition for rehearing, that since the separate conspiracy had taken place wholly in New Jersey, the venue of the trial was improper.

It became essential for the Government, to defeat Rudy's petition for rehearing, to persuade the court that the several conspiracies to produce narcotics in which Liss and Conte had participated, were in fact one. And so it was argued in effect, in the Government's "Reply to Appellant Rudy's Petition for a Rehearing", on file in this court, that the common purpose of Rudy and the other coconspirators, Liss and Conte, was to supply the illegal narcotics market by *any and all* means. The following was the formulation of the Government's claim: a claim which the court rejected *per curiam* in Rudy's case, but now, under the views expressed as to Sobell, would apparently be adopted:

> "the proof showed a single conspiracy to supply the illicit market of which the activities of Rudy, Liss, and Conte were an integral part. The agreement contemplated by the exploitation of that market by means fair or foul. The conspirators tried different means until they succeeded in accomplishing their objective" (Government's "Reply", p. 1).

We respectfully submit that rehearing is appropriate here because of the mischief of the "*any and all*" approach in making it possible to obliterate all lines between conspiracies, and in view of the specific rejection of this approach by this court in *United States* v. *Liss*, supra.

Role of the Jury: The majority of the court, without a statement of its views on the point,* permits the decision below to stand, despite the interference with the role of the jury, in the court's instructions on the nature of the conspiracy (R. 2355).

It is not possible to discern how it can be said that the jury below found the conspiracy to be unitary, rather than

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* Since the views stated on its behalf were confined solely to whether a single conspiracy *could* have been found.

[fol. 2579] dual, when the court's instructions gave it no choice in the matter. Even in the *Blumenthal* case, the issue was not taken away from the jury, as, we submit, it was below in this case. As the opinion of the Ninth Circuit Court of Appeals pointed out in *Blumenthal*, 158 F. (2d) 883, it was "*the jury*" that "was justified in infering that appellants were parties to a single agreement and conspiracy to commit the offenses charged in the indictment" (at p. 888).

The view of the majority here was based on the assumption that "the jury could and did reasonably find that Sobell consented to the dominant aim, and so became a member of the Rosenberg-Greenglass-Gold Conspiracy" (slip opinion, p. 695).

The issue of "consent" to the dominant aim is much like a question of "intent";—and such a "question of fact • • • must be submitted to the jury." *Morisette* v. *United States*, Jan. 7, 1952, 96 L. Ed. (adv. op.) 180, 196. The "trial court may not withdraw or prejudge the issue", id., p. 197.

The instruction given in respect of Sobell's guilt or innocence necessarily *withdrew and prejudged* the question —the jury was told if he was guilty of any conspiracy, it was of the single, major conspiracy visualized by the trial judge. As Justice Jackson said in *Morisette*, id., p. 197:

> "Had the jury convicted on proper instructions it would be the end of the matter. But juries are not bound by what seems inescapable logic to judges."

II

A premise which hitherto has uniformly and consistently been rejected in our law, has been accepted in the portion of the court's opinion dealing with admission of evidence of political views.

The opinion states:

> "But one may reasonably infer that he is more likely to spy for it than other Americans not similarly devoted" (slip op. p. 682).

[fol. 2580] Such an inference may be permitted by logic: it has heretofore been flatly forbidden by law.

E.G.:

> "It is certainly 'more probable' that a crooked official did steal than if he were an upright one. *Yet our law forbids these very premises.*" (Emph. suppl.) *Railton* v. *United States*, 127 F. (2d) 591.

See also:

> *Wigmore, Evidence*, Sec. 57, p. 454, 456;
> *People* v. *Zackowitz*, 254 N. Y. 192;
> *People* v. *Richardson*, 222 N. Y. 103.

If a premise is forbidden by law, that proscription can not be avoided by the route: "Hence this attitude bears on a possible motive for his spying or a possible intent to do so" (slip op. p. 682). This would open a back door too wide. We respectfully submit that this is an impermissible, conjectural basis of proof whereby an exception will destroy a rule. Proof of another crime has been held admissible to show "intent", etc., *only* when it supplies *direct* proof of a state of mind in issue at a trial.

> "None of these exceptions, when rightly applied, go to the extent of sanctioning the idea that a defendant's propensity to commit crime, or to commit crimes of the same sort as that charged, can be put in evidence to prove him guilty of the particular offense; and to come within the exception there must be some *other real connection* between the extraneous crime and the crime charged. *The transaction must always be similar or substantially so*" (emph. suppl.).
>
> Zoline, *Federal Criminal Law and Procedure*, Sec. 357, p. 297.

The error that appears in the case of such use of political preference, is enhanced in the case of mere political *affiliation*. The absence even of the logical inference of propensity (which the law would forbid applying, even if it existed, *supra*) is allowed to be made up for by the testi-
[fol. 2581] mony of one witness—Bentley—concerning her misdeeds, and gossip concerning the misdeeds of others. Can

it be enough to cure the error of using inadmissible evidence, in support of a forbidden premise, that the jury may have "believed" her? Once, in our country, as Mr. Justice Brandeis pointed out in concurring in *Whitney* v. *California*, 274 U. S. 357, 376, "Men feared witches and burnt women". Can it not be said that to allow jurors to be inflamed by evidence such as Bentley's, permits men who fear spies to burn political dissenters?

The court notes (slip op. p. 676, 705n. 24) the dubious quality of the prosecution's substantive proof. Is its appellate function exhausted by suggesting waiver of trial by jury when the death penalty is at stake, and permitting proof of a dubious order to be reinforced by "highly inflammatory" evidence yielding "marked ill-will" for defendants (slip op. p. 683)? Candor compels recognition that neither motive nor intent were issues presenting difficulty to the prosecution, if it had proved the acts charged below by satisfactory evidence; the political evidence ostensibly offered to show intent had preponderantly a prejudicial purpose. This court, Chief Judge Hand writing the opinion, did not suggest that the defendant, Krulewitch, charged with illicit interstate traffic in women, should waive a jury trial (*United States* v. *Krulewitch*, 145 F. 2d 76, 80) nor did the United States Supreme Court suggest a possibly similar course to the defendant charged with murder (*Shepard* v. *United States*, 290 U. S. 96, 104). They agreed that "when the risk of confusion is so great as to upset the balance of advantage, the evidence goes out" (*id.*).

III

The court has accepted, so far as we can discern from the opinion, our contention that the pretrial rulings on our motion for a bill of particulars were erroneous, and yet appears inadvertently to have omitted to rule on the effect of this error.

[fol. 2582] The opinion shows:

> a. "Defendant Sobell made a motion for a bill of particulars. The Government's answering affidavit charged Sobell with five overt acts made in furtherance of the conspiracy, all consisting of 'conversations' with Julius Rosenberg on various dates" (slip op. p. 668).

b. "The Rosenbergs, like Sobell, might have requested such a bill" (of particulars) (slip op. p. 674, n. 2).

c. "Sobell's counsel argued that on the basis of the indictment and information obtained from an unsuccessful attempt to get a more enlightening bill of particulars, it was impossible for Sobell to ask for a severance earlier on these grounds. Sobell's position seems well taken * * *" (slip op. p. 692 n. 15).

To say that Rosenberg should have asked for a bill of particulars would seem to indicate that one should have been granted. To say that Sobell's position was "well taken" seems to indicate error below in the denial of adequate particulars. To affirm in the face of such error would not be just, unless it could be said that Sobell was not "harmed" by the error.

But the court's opinion recognizes that it was "prejudicial" for Sobell to have been "jointly tried with major atomic energy spies". Even assuming the correctness of the holding of the majority here, as to a single conspiracy, Sobell should still have been permitted to invoke the discretion of the trial judge under Rule 14, F. R. C. P., in requesting a severance of his trial. Such a severance would have been permissible even if there had been a single conspiracy, cf. *Hale* v. *U. S.*, 25 F. (2d) 430.

It seems that we were not sufficiently articulate in our argument on this point, Sobell's, main brief, pp. 33-4. Our contention was not merely, as implied in footnote 15 of the court's opinion, with respect to a question of "waiver", it was an affirmative argument that the harm to Sobell in denying him an adequate bill of particulars *constituted in itself reversible error.*

[fol. 2583] It is surely arguable that it would have been within the discretion of the trial judge to grant Sobell a severance, even if the conspiracy were "single", *cf. Haupt* v. *United States*, 136 F. (2d) 661, 673-4. For this reason we argued for reversal:

> "The question therefore, is not whether or to what extent discretion has been abused, but whether there was error in the pre-trial rulings on the indictment

and request for a bill of particulars, in that they had the necessary effect of denying opportunity even to seek the exercise of discretion."

If Sobell was not entitled to a more adequate bill of particulars than he received in this case, Rule 7(f) F. R. C. P. may as well be rescinded. And it is in the interests of the sound administration of criminal justice that trial judges be reminded that there is a limit to the tendency—which approaches, with some, a habit—of denying, out of hand, motions under Rule 7(f).

Conclusion

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the district court be upon further consideration reversed.

Respectfully submitted, Harold M. Phillips, Edward Kuntz, Attorneys for Appellant Sobell.

Harold M. Phillips, Edward Kuntz, Howard N. Meyer, of Counsel.

[fol. 2584] Certificate of Counsel

We, counsel for the above named appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, New York, March 11, 1952.

Harold M. Phillips, Edward Kuntz.

[fol. 2585] In United States Court of Appeals for the Second Circuit

United States of America, Appellee

v.

Julius Rosenberg and Ethel Rosenberg, Appellants

Before Swan, Chief Judge, and Chase and Frank, Circuit Judges

Opinion on Petition for Rehearing—April 8, 1952

Emanuel H. Bloch, for appellants Julius Rosenberg and Ethel Rosenberg.

Frank, Circuit Judge:

In their petition for rehearing, the defendants, for the first time, urge as pertinent that portion of Article III, Section 3 of the Constitution, which provides: "Treason against the United States, shall consist only in levying war against them or in adhering to their enemies, giving them [fol. 2586] aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." The Rosenbergs, as we understand them, rest two arguments on this provision.

(1) The first runs thus: (a) Had the defendants been indicted and tried for giving aid to an "enemy," the crime charged would have been treason, and they could not have been convicted unless the trial judge instructed the jury as to the two-witness rule and told the jury specifically the overt act or acts which a jury must find in order to justify a verdict of guilty.[1] (b) Here the defendants were indicted and tried for giving aid to a country which was not an "enemy." (c) Consequently, the crime of which they were accused was of the same kind as treason—but of a lesser degree. (d) The constitutional safeguards applicable to a trial of the greater crime of this kind must

[1] *Cf.* our analogous holding in *United States* v. *Remington*, 191 F. (2d) 246 (C. A. 2), with reference to the similar two-witness (or one corroborated witness) rule applicable to proof of an overt act in a perjury trial.

be applied to the lesser. (e) But here there were no such safeguards, since the trial judge did not give the instructions constitutionally required in a treason trial.

The Supreme Court's decision in *Ex parte Quirin*, 317 U. S. 1, 38, disposes of this contention. There the defendants, including Haupt and Burger, United States citizens, were held guilty of violating the article of War which make it a crime, punishable by death, for an enemy belligerent to pass our boundaries without uniform or other insignia signifying belligerent status. Admittedly, the conduct constituting this crime would also, in the case of Haupt and Burger, have constituted treason, but this crime of which the defendants were accused was more specific than treason. The Supreme Court (of its own motion) [fol. 2587] raised, and then rejected, the argument that, on this account, the procedural requirements of a treason trial must be, and had not been satisfied. The Court said: "The argument leaves out of account the nature of the offense which the Government charges and which the Act of Congress, by incorporating the law of war, punishes. It is that each petitioner, in circumstances which gave him the status of an enemy belligerent, passed our military and naval lines and defenses or went behind those lines, in civilian dress and with hostile purpose. The offense was complete when with that purpose they entered—or, having so entered, they remained upon—our territory in time of war without uniform or other appropriate means of identification. For that reason, even when committed by a citizen, the offense is distinct from the crime of treason defined in Article III, section 3 of the Constitution, since the absence of uniform essential to one is irrelevant to the other. *Cf. Morgan* v. *Devine*, 237 U. S. 632; *Albrecht* v. *United States*, 273 U. S. 1, 11-12." This ruling has been criticized. See *e. g.*, Hurst, *Treason in the United States*, 58 Harvard Law Rev. (1945) 395, 421.[2] But this ruling

[2] Hurst commented: "On the other hand, where the defendant is charged with conduct involving all the elements of treason within the constitutional definition, and the gravamen of the accusation against him is an effort to subvert the government, or aid its enemies, it would seem in disregard of the policy of the Constitution to permit him

[fol. 2588] binds inferior courts such as ours.[3] In the *Quirin* case, the absence of uniform was an additional element, essential to Haupt's non-treason offense although

to be tried under another charge than 'treason.' However, the decision in Ex parte Quirin casts considerable doubt on the validity of this analysis."

After quoting that passage from that opinion which we have quoted above in the text, Hurst continued: "The decisions cited as analogies by the Court are the now standard authorities holding that the double jeopardy clause of the Constitution is not violated by conviction for two or more offenses which are in substance part of the same criminal transaction, but which involve different elements in the allegation. It is not a convincing technique of interpretation to apply to a constitutional guaranty having its own history of policy a formal test developed under a different clause of the Constitution, with no demonstration that the policies behind the respective clauses are so similar as to be fulfilled by the same criterion. The double jeopardy clause is historically a guaranty against abuse of the law enforcement machinery as such, without reference to abuses peculiar to any one of the major types of crime. When the Constitution singles out the offense of treason as subject to special abuse, citation of a highly technical rule developed by judicial construction out of the general guaranty is in itself little evidence that the peculiar dangers against which the special guaranty was erected have been avoided. Though the type of offense charged against the American citizen in the saboteur group is a very clear case of treason, it is also within the category of charge the abuse of which was feared by the framers. The 'absence of uniform' noted as the essentially distinct element of the offense under the law of war made the defendant's conduct more dangerous simply because it enabled him to appear as what he was—one of the body of citizens. And it was citizens that the limitations of the treason clause were intended to protect."

[3] The defendants suggest that the *Quirin* decision, because it involved an appeal from a military tribunal of a conviction for an offense against the laws of war, "was based alone on a resolution of the conflict of the jurisdiction of military and civil authority." We do not read the opinion that way. See Hurst, *supra*, at 422, note 135.

irrelevant to his treason; in the *Rosenbergs'* case, an essential element of treason, giving aid to an "enemy," is irrelevant to the espionage offense.

(2) The Rosenbergs present a second argument, which is a variant of the first and is as follows: (a) Traditionally, and in this country by statute, the courts have been authorized to impose the death penalty for treason. (b) To authorize such a sentence for a similar but less grave offense, in the trial of which there are omitted the guaranteed safeguards of a treason trial, is to permit "cruel and unusual" punishment in violation of the Constitution. (c) That part of the Espionage Act which authorizes the death sentence is therefore unconstitutional. (d) Accord- [fol. 2589] ingly, the trial judge should be directed to reduce the sentence.[4]

This argument, we think, involves an unfounded assumption, *i. e.*, that Congress will always authorize the death sentence for treason. Without that assumption the argument would compel the strange conclusion that, if Congress, in its discretion, authorized a maximum twenty-year penalty for treason, no greater punishment could be given for espionage, sedition or a similar crime without its

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[4] See Hurst, *supra*, at 423: "There is the possibility that Congress might be restrained by the constitutional ban on cruel or unusual punishments from imposing the highest penalties for certain conduct, unless it were held to mount to the level of treason." In a footnote, Hurst adds: "A penalty may be 'cruel and unusual' because unreasonably disproportionate to the offense. Weems v. United States, 217 U. S. 349 (1910); see Chambers v. Florida, 309 U. S. 227, 236 (1940). The contention that severe penalties possible under sedition acts are so disproportionate as to violate the Eighth Amendment has not met with success, and it seems that no legislative excess short of including capital punishment would run afoul of this provision. Cf. Dunne v. United States, 138 F. (2d) 137, 140 (C. A. 8, 1943), cert. den. 320 U. S. 790; Chafee, Free Speech in the United States (1941) 480. But cf. Herndon v. Lowry, 301 U. S. 242 (1937); Chafee, op. cit. 396. See 1 Schofield, Essays on Constitutional Law and Equity (1921) 421."

becoming "cruel and unusual." Moreover, as the *Quirin* case had the unavoidable consequence of permitting death sentences to be imposed upon the citizen-saboteurs for crimes other than treason, the Supreme Court must there have implicitly rejected the "cruel and unusual" argument. As, however, the Supreme Court did not specifically discuss it, that Court may well think it desirable to review that aspect of our decision in this case.

Petition for Rehearing Denied.

[fols. 2590-2591] In United States Court of Appeals for the Second Circuit

United States of America, Plaintiff-Appellee,

v.

Morton Sobell, Defendant-Appellant

Before Swan, Chief Judge; Chase and Frank, Circuit Judges

Per Curiam Order Denying Petition for Rehearing—April 8, 1952

Harold M. Phillips and Edward Kuntz (Howard N. Meyer, of Counsel) for appellant.

Per Curiam:

Petition for rehearing denied.

T. W. S., H. B. C., C. JJ.

[File endorsement omitted.]

[fols. 2592-2593] In United States Court of Appeals, Second Circuit

[Title omitted]

Order Denying Petition for Rehearing—April 8, 1952

A petition for a rehearing having been filed herein by counsel for the appellants,

Upon consideration thereof, it is
Ordered that said petition be and hereby is denied.
Alexander M. Bell, Clerk.

[fols. 2594-2595] In United States Court of Appeals, Second Circuit

[Title omitted]

Order Denying Petition for Rehearing—April 8, 1952

A petition for a rehearing having been filed herein by counsel for the appellant,
Upon consideration thereof, it is
Ordered that said petition be and hereby is denied.
Alexander M. Bell, Clerk.

[fol. 2596] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 2597] Supreme Court of the United States, October Term, 1951

No. —

Julius Rosenberg and Ethel Rosenberg, Petitioners,

vs.

The United States of America

Order Extending Time to File Petition for Writ of Certiorari—April 30, 1952

Upon consideration of the application of counsel for petitioners,
It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 7th, 1952, and it is further ordered that the mandate of the United States Court of Appeals for the Second Circuit be stayed pending final

disposition of the petition for writ of certiorari, providing the petition is filed within the time as extended.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.

[fol. 2598] Supreme Court of the United States, October Term, 1951

No. —

Morton Sobell, Petitioner,

vs.

United States of America

Order Extending Time to File Petition for Writ of Certiorari—April 30, 1952

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 7th, 1952, and it is further ordered that the mandate of the United States Court of Appeals for the Second Circuit be stayed pending final disposition of the petition for writ of certiorari, providing the petition is filed within the time as extended.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.